



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18159494

Date: SEPT. 7, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center (Director) denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that U.S. Citizenship and Immigration Services' (USCIS) consent was not warranted. On appeal, the Petitioner asserts his eligibility for SIJ classification. The Administrative Appeals Office reviews the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners must show that they are unmarried, under 21 years old, and have been subject to a state juvenile court order determining that they cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b).¹ Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual or entity appointed by the state or the juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in the petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

USCIS has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)–

¹ The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. See Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

(iii) of the Act; 8 C.F.R. § 204.11(b)(5). Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [redacted] 2018, when the Petitioner was 17 years old and in the custody of the U.S. Department of Health and Human Services Office of Refugee Resettlement (ORR), Division of Unaccompanied Children's Services, the District Court for the [redacted] Judicial District in [redacted], Texas (District Court) issued an order entitled Final Order for Declaratory Judgment (SIJ order). The SIJ order provides, in pertinent part, that the Petitioner is "dependent upon this Court pursuant to section 261.001(b)(4) of the Texas Government Code (Tex. Govt. Code)," and notes that the District Court has responsibility under section 24.601(b)(4) of the Tex. Govt. Code for cases involving "child welfare, custody, support, and reciprocal support, dependency, neglect, and delinquency." The SIJ order further provides that the Petitioner's reunification with his parents "is not viable due to abuse and neglect established herein as defined by Texas Family Code § 261.001," and "[i]t is not in the [c]hild's best interest to be returned to Guatemala, his country of nationality." Based on the SIJ order, the Petitioner filed his SIJ petition in December 2018.

After review, the Director denied the SIJ petition. Specifically, the Director determined that "USCIS concedes that [the Petitioner was] indeed in custody until January 25, 2019, and the order submitted finds [him] to be dependent on the court, but . . . [he has] not met [his] burden of showing that the court provided some form of placement, supervision, services or other relief in connection with the finding of dependency, and therefore USCIS consent is not warranted."

On appeal, the Petitioner asserts, among other things, that the Director erred by concluding that USCIS' consent was not warranted. Specifically, he contends that because he was in the custody of ORR when the SIJ order was issued, the District Court did not need to order some other form of placement, supervision, services, or other relief from parental abuse and neglect in connection with the finding of dependency.

B. USCIS' Consent is Warranted

As noted above, SIJ classification may only be granted upon the consent of DHS, through USCIS, when petitioners meet all the other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS' consent, juveniles must establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); see also section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought "primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect"). Such relief may include "court-recognized protective or remedial relief, including recognition of the petitioner's placement in the custody of [ORR]." 8 C.F.R. § 204.11(d)(5)(ii)(B).

Here, as the Director noted, the District Court recognized that the Petitioner was in federal custody with ORR when the SIJ order was issued. His placement with ORR afforded him protection as an unaccompanied child pursuant to federal law and obviated the District Court's need to make legal determinations about his custody or provide him with additional relief from parental maltreatment under Texas state law. 8 C.F.R. § 204.11(d)(5)(ii)(B); see also Homeland Security Act of 2002, Pub. L. 107-296, § 462(b)(1), 116 Stat. 2135, 2203 (2002) (providing that ORR shall be responsible for "coordinating and implementing the placement and care of unaccompanied alien children in Federal custody by reason of their immigration status"). Considering the foregoing, and because the Petitioner has established that he meets all other eligibility criteria and sought the SIJ order to obtain relief from parental abuse and neglect, his request for SIJ classification warrants USCIS' consent under section 101(a)(27)(J)(iii) of the Act.

III. CONCLUSION

The Petitioner has overcome the Director's grounds for denying the SIJ petition. The Director's decision is therefore withdrawn, and the appeal is sustained.

ORDER: The appeal is sustained.