



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

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

In Re: 29200281

Date: DEC. 12, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner seeks classification as a special immigrant juvenile (SIJ). *See* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the National Benefits Center denied the petition, concluding that the record did not establish that the consent of U.S. Citizenship and Immigration Services (USCIS) for approval of the SIJ petition was warranted. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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 dismiss 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)(i) of the Act; 8 C.F.R. § 204.11(b).¹ Petitioners must have been declared dependent upon the juvenile court; alternatively, 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; 8 C.F.R. § 204.11(c)(1). The record must also contain a judicial or administrative determination that it is not in the juvenile's 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).

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).

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.

II. ANALYSIS

A. Relevant Evidence and Procedural History

In [] 2022, when the Petitioner was 20 years old, the [] Massachusetts Trial Court, Probate and Family Court (family court) issued a “Judgment of Dependency Pursuant to G.L. c. 119, § 39M” (dependency judgment). The family court noted that it was acting as a juvenile court and made the following determinations: the Petitioner was an unmarried child under the age of 21; the Petitioner was dependent on the family court; the Petitioner’s biological parents had neglected him; reunification with his parents was not viable due to neglect; and it was not in the Petitioner’s best interest to return to Guatemala. The family court issued a separate “Special Order of Facts and Law” (special order). The special order noted that the Petitioner had provided a stable home for himself in Massachusetts and was dependent on the court. It further indicated that his parents, both in Guatemala, were unable to provide for his needs and had neglected him. On this basis, the court found it was not in the Petitioner’s best interest to be returned to Guatemala and that reunification with his parents was “not presently a viable option.”

The Petitioner submitted the SIJ petition to USCIS, relying on the dependency judgment and the special order issued by the family court. The Director denied the petition, concluding that the Petitioner had not established that USCIS’s consent was warranted; the Director noted that the family court had not provided relief from parental neglect, as required by regulation. *See* 8 C.F.R. §§ 204.11(b)(5), 204.11(d)(5)(i)(A). The Director listed applicable forms of relief, such as custodial placement, the provision of child welfare services or other court-ordered or recognized protective or remedial relief. As this relief was not obtained, the Director concluded that obtaining relief from parental maltreatment was not a primary purpose for which the Petitioner had obtained the family court orders and, therefore, USCIS would not consent to SIJ classification.

On appeal, the Petitioner submits a brief contesting the Director’s analysis of the family court orders. He argues that the regulatory requirements have been met and that relief was adequately addressed by the family court. He notes that his affidavit outlines his living conditions in detail and the court had a factual basis for its decisions. He also indicates that the family court ordered the Petitioner to remain under his own care; the family court was permitted to find self-care an appropriate placement option given the Petitioner’s age and concerns. He contends that looking outside the four corners of the family court orders was *ultra vires* and not within the Director’s purview. Ultimately, he indicates that while some immigration motive may have existed for seeking the family court order, USCIS cannot show that he lacked a sincere intent to seek the family court’s placement authority.

B. USCIS' Consent Is Not Warranted

Classification as an SIJ may only be granted upon the consent of USCIS when a petitioner meets all eligibility criteria under section 101(a)(27)(J)(i)-(iii) of the Act. In addition, the request for SIJ classification must be bona fide. 8 C.F.R. § 204.11(b)(5). To show a bona fide request for SIJ classification, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b). Here, USCIS' consent is not warranted because the Petitioner has not established that a primary reason for seeking the custody order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law.

To establish that USCIS' consent is warranted, the juvenile court order or supplemental evidence must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). Such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* Upon review of the record, we find the Petitioner has not established by a preponderance of the evidence that a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. The record does not establish that the family court provided protective or remedial relief to the Petitioner for such parental maltreatment pursuant to the Massachusetts child protection provisions or any other Massachusetts law, as required to establish that USCIS' consent is warranted. *See* 8 C.F.R. § 204.11(d)(5)(ii).

Although the family court made the necessary findings as to parental reunification and found it would not be in the Petitioner's best interest to be returned to Guatemala, the family court did not order relief from the neglect. We recognize that section 39M of the Massachusetts General Laws, which establishes the Family Court's jurisdiction over the Petitioner to make special findings related to requests for SIJ classification, is cited in the SIJ order. *See* M.G.L. ch. 119, § 39M (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113. Section 39M allows judges to make custodial placements. Section 39M further grants judges the authority to direct certain relief in the form of "orders necessary to protect the child against further abuse or other harm," including complaints for abuse prevention or support, as well as court-provided referrals for "psychiatric, psychological, educational, occupational, medical, dental or social services or [. . .] protection against trafficking or domestic violence." *Id.* However, the family court's citation to section 39M does not, by itself, establish that a juvenile was ultimately provided relief from parental maltreatment. *See* 8 C.F.R. § 204.11(d)(5)(ii).

Here, the family court indicated that its findings were in accordance with section 39M, but it did not include any specific orders or referrals to support the Petitioner's health, safety, and welfare under the section 39M provisions as relief from parental maltreatment. *See* M.G.L., ch. 119, § 39M. While the dependency order signed by the family court contained a section for the judge to enter any court-ordered referrals, this section was left blank. The Petitioner has also not shown that the family court ordered a custodial placement. We have reviewed the dependency judgment, which finds "it is in the best interest of [the Petitioner] to remain in the care" of the Petitioner himself. However, the dependency judgment does not indicate that this custodial placement or any other placement was actually ordered. Without such court-ordered relief, the Petitioner has not demonstrated 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. As such, the Petitioner has not established USCIS' consent is warranted.

III. CONCLUSION

The Petitioner has not submitted evidence sufficient to show, by a preponderance of the evidence, that the request for SIJ classification is bona fide; the record does not show that a primary reason for seeking the family court orders was to obtain relief from parental maltreatment.

ORDER: The appeal is dismissed.