



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

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

In Re: 16363822

Date: JAN. 05, 2023

Service Motion on Administrative Appeals Office 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). We initially rejected the Petitioner's appeal as untimely, but we subsequently reopened the matter *sua sponte* pursuant to 8 C.F.R. § 103.5(a)(5) to adjudicate the Petitioner's appeal, which he established had been timely filed. On service motion, the Petitioner submits another brief and asserts his eligibility for SIJ classification. 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) (2022).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; 8 C.F.R. § 204.11(c)(1). 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. Section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

U.S. Citizenship and Immigration Services (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

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).

was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5), (d)(5)(ii). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. 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). We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [REDACTED] 2018, on the Petitioner's 18th birthday, the General Court of Justice in the District Court Division of [REDACTED] North Carolina (District Court) issued a child custody order (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that it had jurisdiction over the Petitioner to make a custody determination "pursuant to the provisions of North Carolina General Statutes § 50A-201" and jurisdiction over the parties and the subject matter under sections 50A-204 and 50-13.5(c)(2). Although the Petitioner was 18 years old at the time the SIJ order was signed, the order referred to him as a minor child and stated he was 17 years old. The District Court also found that the Petitioner's reunification with his mother and his return to his home country would not be in his best interest due to her neglect and abandonment of him there and his lack of support there. The District Court went on to find that granting the Petitioner's father custody of him would be in his best interest so he could make educational, legal, and medical decisions for the Petitioner and accordingly, granted full custody of the Petitioner to his father. The District Court further decreed that it would retain jurisdiction over him, his parents, and the subject matter of the order "for purposes of modifications and /or enforcement of the terms and provisions of [the] order and said retention of jurisdiction shall continue until further order of this court and/or pursuant to North Carolina General Statute § 50-13.8."

Based on the SIJ order, the Petitioner filed his SIJ petition in March 2019. In subsequently denying the SIJ petition, the Director determined that the Petitioner had not shown that the District Court had jurisdiction over him as a juvenile under state law as he was over 18 years of age and over the age of majority under North Carolina law when the court SIJ order was issued. The Director further determined that because he was over the age of majority at the time the SIJ order was signed, the Petitioner had not established that the primary purpose he sought the SIJ order was to obtain relief from parental mistreatment rather than to obtain an immigration benefit. Therefore, the Director concluded that the Petitioner also had not met his burden to show his request for SIJ classification was bona fide and therefore warranted USCIS' consent.

On appeal, the Petitioner argues that the District Court had jurisdiction over him as a juvenile under state law. He further asserts that he has established that a primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law such that USCIS' consent to his request for SIJ classification is therefore warranted.

B. Jurisdiction as a Juvenile Court

To be eligible for SIJ classification, petitioners must have been subject to a dependency or custody order issued by a “juvenile court,” which is defined as “a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.” Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(a). While the specific title and type of state court may vary, SIJ petitioners must establish that the court had jurisdiction under state law to make judicial determinations about their dependency and/or custody and care as a juvenile in order to meet the definition of a juvenile court at 8 C.F.R. § 204.11(a). Not all courts having jurisdiction over juveniles under state law may be acting as juvenile courts for the purposes of SIJ classification; for example, a court of general jurisdiction that issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding would generally not be acting as a juvenile court for SIJ purposes, and the burden is on the petitioner to establish that the court is acting as a juvenile court at the time that the order is issued. *See* 8 C.F.R. § 204.11(c)(3) (stating that the “juvenile court must have exercised its authority over the petitioner as a juvenile”); *see also* 6 USCIS Policy Manual J.2, <https://www.uscis.gov/policy-manual>.

In the present case, the Director properly determined that the District Court order was not issued pursuant to the court’s jurisdiction over the Petitioner as a juvenile, because the SIJ order was issued when the Petitioner was 18 years of age and no longer a “child” or “minor” as contemplated by North Carolina law. North Carolina law specifies that the age of majority is generally 18 years of age. *See* N.C. Gen. Stat. Ann. §§ 48A-2 (defining “minor” as “any person who has not reached the age of 18 years”), 50A-102 (defining “child” as “an individual who has not attained 18 years of age”). Moreover, North Carolina district courts are courts of general jurisdiction and therefore do not rule on juvenile matters in every case before them. *See e.g.* N.C. Gen. Stat. Ann. § 7A-240 (stating that “original general jurisdiction of all justiciable matters of a civil nature cognizable in the General Court of Justice is vested in . . . the district court division as [a] trial division[] of the General Court of Justice). In this case, the District Court did not cite to any state law that provided it with jurisdiction over the Petitioner as a juvenile at the time the SIJ order was issued after his 18th birthday .

The Petitioner argues that SIJ eligibility is sufficiently established because he was under 18 years old when the child custody proceeding was initiated, which is in accordance with North Carolina’s initial child-custody jurisdiction requirement that the state must be “the home state of the *child on the date of the commencement* of the proceeding, or was the home state of the *child* within six months before the commencement of the proceeding.” N.C. Gen. Stat. Ann. § 50A-201 (emphasis added). He maintains that there is no statutory requirement that an SIJ petitioner still be a child when the order is issued. As stated, the Act specifically requires a dependency or custody order issued by a “juvenile court,” which the corresponding regulation defines as a court in the United States having “jurisdiction under State law” to make judicial determinations about the dependency and/or custody and care of juveniles. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(a). Consequently, although we do not dispute that the Petitioner was a child at the time the District Court proceeding was initiated or that the court had authority to exercise jurisdiction over him in his custody proceedings and to issue the custody order, contrary to the Petitioner’s position, the record must establish that the court exercised jurisdiction over him as a juvenile under state law at the time the SIJ order was issued, rather than as a court of general jurisdiction. *Id.*

The Petitioner further asserts that the District Court exercised continuing jurisdiction over him as a juvenile based on its citation to section 50-13.8 of the North Carolina General Statutes in the custody order. However, that section states that for custody purposes “the rights of a person who is mentally or physically incapable of self-support upon reaching his majority shall be the same as a minor child for so long as he remains mentally or physically incapable of self-support.” N.C. Gen. Stat. Ann. § 50-13.8. This provision therefore allows for the court’s continued jurisdiction where, as the Petitioner himself acknowledges, the individual lacks capacity for self-support, rather than because they are a juvenile or a minor under state law. Consequently, the citation to section 50-13.8 in the court order is not sufficient to establish that the District Court exercised jurisdiction over the Petitioner *as a juvenile* after his 18th birthday. Section 50-13.8 does not provide any exception, implicit or otherwise, for individuals who have reached the age of 18 to be considered a minor under North Carolina law in juvenile dependency and/or custody proceedings. And, although the District Court refers to the Petitioner as a “minor child” in the SIJ order, it cited no other state law or authority for the court’s jurisdiction over him as a juvenile under state law after his eighteenth birthday.

Accordingly, the record does not demonstrate that the court had jurisdiction over the Petitioner's custody and care *as a juvenile* under North Carolina child welfare law such that it was acting as a juvenile court for purposes of SIJ classification when it issued the SIJ order in his case after his 18th birthday.

III. CONCLUSION

As discussed above, the Petitioner has not demonstrated that the District Court was acting as a juvenile court when it issued the SIJ order. Accordingly, the Petitioner has not demonstrated his eligibility for nonimmigrant SIJ classification.²

ORDER: The appeal is dismissed.

² Because our finding that the Petitioner has not demonstrated that District Court exercised authority over him as a juvenile court is determinative, we do not reach his arguments on appeal regarding USCIS’ consent determination and hereby reserve the Petitioner’s remaining appellate arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).