



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

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

In Re: 18462475

Date: JAN. 05, 2023

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 petition, concluding that U.S. Citizenship and Immigration Services' consent to SIJ classification was not warranted. On appeal, the Petitioner asserts her 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).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).

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)–(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

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).

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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [REDACTED] 2018, when the Petitioner was 18 years old, the Massachusetts Probate and Family Court in [REDACTED] (Family Court) issued an order titled, “DECREE on Complaint in EQUITY and Request for Declaratory Relief” (SIJ order), determining that, “pursuant to M.G.L. c. 215 § 6,” the Family Court had jurisdiction over the Petitioner to make equity determinations until her twenty-first birthday. The order also included other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. Specifically, the Family Court further found that the Petitioner’s reunification with her father was not viable due to a history of neglect and abandonment. The Family Court went on to find that it was not in her best interest to return to El Salvador, her country of nationality. The underlying documents submitted to the Family Court also established the factual basis for the parental reunification and best interest determinations.

Based on the SIJ order, the Petitioner filed her SIJ petition in January 2019, when she was 19 years old. In response to the Director’s a Request for Evidence (RFE), the Petitioner provided a copy of an amended *nunc pro tunc* SIJ order issued in [REDACTED] 2020 when she was 20 years old. The amended SIJ order clarified that the Family Court’s “findings regarding abuse, neglect, abandonment, or similar circumstance, reunification, and child’s best interest are in accordance with” Massachusetts General Law (M.G.L.) chapter 119, section 39M (section 39M); M.G.L. chapter 210, section 3 (section 3); and the Code of Massachusetts Regulations (C.M.R.). In February 2021, the Director denied the SIJ petition, determining the Petitioner did not establish that her request for SIJ classification warranted USCIS’ consent, as the record did not establish that the court provided some form of relief to protect the Petitioner from parental neglect or abandonment such as custodial placement, supervision, or services in connection with the finding of dependency.

On appeal, the Petitioner argues that she has established that her primary purpose in seeking the SIJ orders from the Family Court was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit, and that USCIS’ consent is therefore warranted.²

B. USCIS’ Consent

A request for SIJ classification must be bona fide and all other SIJ eligibility criteria must have been met by the petitioner for USCIS to grant consent to SIJ classification. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5), (d)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief

² Although the Petitioner stated on her Form I-290B, Notice of Appeal or Motion that she would submit a brief and/or additional evidence within 30 calendar days of filing the appeal, we have not received her brief or any additional evidence to date.

from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5). If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS may withhold consent. *Id.*

To establish that USCIS' consent is warranted, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents 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). The regulations specify that 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.* An example of court-recognized remedial relief includes the recognition of a petitioner's placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement. *Id.* USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS' consent, the requisite SIJ determinations must be made under state law in connection with proceedings in which a petitioner seeks and is granted some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law. *See* 8 C.F.R. § 204.11(d)(5)(ii).

As stated, USCIS consent will only be granted if the petitioner satisfies all other SIJ eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act. The record, including both SIJ orders, reflect that the court made the requisite parental reunification and best interest determinations. However, although not raised by the Director, the orders and the underlying documents to the Family court do not indicate that the Family Court made a juvenile dependency declaration or a child custody determination, as required by section 101(a)(27)(J)(i) of the Act.³ *See also* 8 C.F.R. § 204.11(c)(1). The Petitioner has not otherwise 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, and not primarily to obtain an immigration benefit. As the Director determined, while the court orders reflect that the Family Court made findings of abandonment and neglect by the Petitioner's father and determined that reunification with the father was not viable on that basis, the record does not establish that the court provided any 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). We recognize that section 39M cited in the amended order provides for 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." M.G.L. ch. 119, § 39M (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113. However, the Family Court's citation to section 39M does not, by itself, establish that a juvenile was provided relief from parental maltreatment. *See* 8 C.F.R. § 204.11(d)(5)(ii). Here, the amended SIJ order indicated only that its findings were in

³ SIJ petitioners must be declared dependent upon a juvenile court, or be legally committed to, or placed under the custody of, a state agency or department, or of an individual or entity appointed by a state or juvenile court. Section 101(a)(27)(J)(i) of the Act. *See also* 8 C.F.R. § 204.11(c)(1) (requiring a court-ordered dependency or custody determination by the juvenile court in order to establish SIJ eligibility). Here, neither court order reflects that the court made either a dependency or custody determination, as required. In any future filings, the Petitioner must address this additional basis for ineligibility.

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. Likewise, the amended SIJ order cited to section 3, which section establishes certain conditions related to abuse and neglect that allow a juvenile or district court to issue an adoption, custody, guardianship, or other similar child disposition order without parental consent. *See* M.G.L., ch. 210, § 3. However, the amended SIJ order did not include any such orders or relief decrees.

Overall, the preponderance of the evidence does not establish that a primary reason the Petitioner sought the Family Court orders in this case was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and that the court provided such relief. Consequently, the Petitioner has not demonstrated that USCIS' consent to a grant of SIJ classification is not warranted. Accordingly, the Petitioner has not demonstrated her eligibility for SIJ classification.

ORDER: The appeal is dismissed.