



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

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

In Re: 26876669

Date: MAR. 30, 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 (Director) denied the petition, concluding that the Petitioner did not establish that the consent of U.S. Citizenship and Immigration Services (USCIS) to her SIJ classification was warranted. The matter is now before us on appeal.

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, a petitioner 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). The petitioner 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 petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

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. Section 101(a)(27)(J)(iii) of the Act. The petitioner must also establish that the request for SIJ classification is bona fide, which requires showing 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).

USCIS may 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [REDACTED] 2021, when the Petitioner was 18 years old, the Massachusetts Probate and Family Court, [REDACTED] (Family Court) issued a *Judgment of Dependency* (judgment), determining among other findings necessary for SIJ eligibility that the Petitioner was “dependent on this Court for [her] protection, well-being, care and custody, findings, rulings, and orders or referrals to support the health, safety, welfare of Child or to remedy the effects on Child of abuse, neglect, abandonment, or similar circumstances.” The Family Court also found that the Petitioner’s reunification with her parents was not viable due to a “similar basis” to abuse, neglect, or abandonment, citing to Massachusetts General Laws chapter 119, section 39M, and that it would not be in her best interest to return to Honduras, her country of nationality.

Based on the judgment of dependency, the Petitioner filed her SIJ petition in September 2021. The Director denied the SIJ petition, determining that the Petitioner had not established that USCIS’ consent to her SIJ classification was warranted. The Director reasoned that the Petitioner had not demonstrated that the Family Court issued the judgment to provide her with relief from parental maltreatment. The Petitioner has not overcome this determination on appeal.

B. USCIS’ Consent is Not Warranted

As stated, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria, section 101(a)(27)(J)(i)-(iii) of the Act, and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish 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. 8 C.F.R. § 204.11(b)(5). To establish that USCIS’ consent is warranted, the juvenile court order or supplemental evidence must 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). Such relief may include (1) a court-ordered custodial placement or (2) court-ordered dependency on the court accompanied by the provision of child welfare services, or some other type of court-ordered or recognized protective or remedial relief. *See id.*

In this case, USCIS’ consent is not warranted because, as the Director correctly determined, the Petitioner has not established that a primary reason she sought the judgment of dependency was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law. Although the judgment declares the Petitioner dependent on the Family Court, there is no evidence in the record that the Family Court granted the Petitioner any specific relief related to mistreatment by her parents as required under 8 C.F.R. § 204.11(d)(5)(ii) or took jurisdiction over the Petitioner in any

other prior or related proceeding providing her with any type of relief or remedy from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law.

Massachusetts law provides that in addition to seeking special findings relating to SIJ eligibility, a child may request other “orders necessary to protect the child against further abuse or other harm by filing a complaint for an abuse prevention order . . . , a complaint for support . . . or seeking any other available relief.” Mass. Gen. Laws ch. 119, § 39M(c). Massachusetts courts may also refer the child “for psychiatric, psychological, educational, occupational, medical, dental or social services or for protection against trafficking or domestic violence.” *Id.* at § 39M(d). Here, however, the Petitioner has not demonstrated that the Family Court ordered any of these forms of relief. In her original *Complaint for Dependency*, the Petitioner requested a referral to probation services for educational, occupational, and counseling services and “enter an order for relief” specifying that the judgment “may be used to establish residency for purposes of education and healthcare.” However, the Family Court did not order the relief requested by the Petitioner in its judgment but instead left blank the following portions of the form order:

6. The Court refers Child to the Probation Service for the coordination of the following services: ☐ educational ☐ occupational ☐ medical ☐ dental ☐ counseling ☐ social ☐ domestic violence ☐ anti-trafficking and/or _____ services as needed.

. . . .

8. The Court also orders:

n/a

In response to a request for evidence (RFE) from the Director, counsel submitted an affidavit acknowledging that although the Petitioner “requested that the Court refer to the Probation Department for educational, occupational, and counseling services to help her deal with the neglect and abandonment that she suffered because of her parents,” the Family Court “did not add the requested referral for services on the final order as requested”

On appeal, the Petitioner submits a *Motion to Amend Judgment of Dependency* in which she notes that the Family Court’s judgment “lacks the referral to the Probation Services that were requested in” her *Complaint for Dependency* and asks the Family Court to amend the judgment “to include the referral to the Probation Services for the coordination of educational, medical and counseling services as needed.” The *Motion to Amend Judgment of Dependency* is accompanied by an affidavit from counsel which states in part that the “referral is necessary so that the [Petitioner] may overcome the parental neglect and abandonment she has suffered and so that she may avail herself of [SIJ classification].” In the margin of the *Motion to Amend Judgment of Dependency*, the judge handwrote “motion is denied” (emphasis in original). Similarly, the Petitioner provides on appeal a copy of a *Renewed Motion to Amend Judgment of Dependency* in which she repeats her request that the Family Court provide referrals “to Probation Services for the coordination of educational, medical and counseling services as needed” Again, the judge handwrote “motion is denied” in the margin of the document. The judge also appears to have circled the phrase “may be” in the section of the *Renewed*

Motion to Amend Judgment of Dependency where the Petitioner explains that section 39M provides that children who are subject to a petition for special findings “may be referred for psychiatric, psychological, educational, occupational, medical, dental, or social services or for protection against trafficking or domestic violence.” Accordingly, the record reflects that despite multiple requests by the Petitioner, the Family Court explicitly declined to exercise its authority to refer her for probation services, which is the relief she sought in her *Complaint for Dependency* and subsequent motions to amend the judgment.

The Petitioner argues on appeal that despite the Family Court’s refusal to grant her requests for specific relief in the form of referral to probation services, the “nature of the proceedings” was to protect her from the neglect and abandonment of her parents. She cites *Matter of A-O-C-*, Adopted Decision 2019-03 (AAO Oct. 11, 2019), and argues that like the petitioner in that case, she has shown that the Family Court granted her relief by entering orders to “provide for [her] safety and welfare, including establishing residency for health care eligibility and protection from future harm under Massachusetts law.” *Matter of A-O-C-*, Adopted Decision 2019-03 at 8. However, in *Matter of A-O-C-*,¹ the state court explicitly ordered such relief, while the Family Court in this case has repeatedly declined to do so despite the Petitioner’s requests.

The Petitioner also contends that the Family Court “deemed it unnecessary to provide a referral for services as it was not required by statute and may not have been applicable to [her] current situation,” and a finding that reunification is not viable is sufficient to protect her from further mistreatment. She emphasizes that section 39M “shall be liberally construed to promote the best interest of the child,” and that her best interests “would be best served by finding that she should remain in the United States” But as previously discussed, the Family Court did not issue the orders for relief the Petitioner requested in her *Complaint for Dependency* or two subsequent motions to amend the judgment of dependency. We recognize that section 39M permits but does not require a court to issue such orders, but some form of relief is necessary to establish that USCIS consent to a petitioner’s SIJ classification is warranted. 8 C.F.R. § 204.11(d)(5)(ii)(A)-(B); *see also* 6 *USCIS Policy Manual* J.2(D), <https://www.uscis.gov/policy-manual> (explaining that when exercising its consent function, USCIS “looks to . . . the relief provided or recognized by the juvenile court”); *Preamble to Final Rule*, Special Immigrant Juvenile Petitions, 87 Fed. Reg. at 13086 (citing then-new 8 C.F.R. § 204.11(d)(5)(i)-(ii) in explaining that to determine whether an SIJ petition is bona fide, USCIS “requires the factual basis for the court’s determinations and evidence that the juvenile court granted or recognized relief from parental abuse, neglect, abandonment, or similar basis under State law”).

Although we acknowledge the Petitioner’s efforts to obtain specific findings, orders, and amended judgments from the Family Court, the Petitioner has not established by a preponderance of the evidence that the judgment of dependency provided her with any protective or remedial relief under Massachusetts law apart from findings enabling her to file an SIJ petition with USCIS. Accordingly, she has not shown that USCIS’ consent is warranted.

¹ *Matter of A-O-C-* has been superseded by the SIJ Final Rule, Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022), and the guidance in the USCIS Policy Manual. USCIS Policy Alert PA-2022-14, *Special Immigrant Juvenile Classification and Adjustment of Status 2* (Jun. 10, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf>.

III. CONCLUSION

The Petitioner has not demonstrated that she warrants USCIS' consent to her grant of SIJ classification. Consequently, she has not established her eligibility for SIJ classification.

ORDER: The appeal is dismissed.