



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

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

In Re: 25860514

Date: MAY 25, 2023

Appeal of National Benefits Center Decision

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

The Petitioner, a native and citizen of Brazil, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the record did not establish that USCIS' consent was warranted because it did not establish the SIJ petition was bona fide. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5).

The matter is now before us on appeal. On appeal, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification and warrants USCIS consent. 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, 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. *Id.* at section 101(a)(27)(J)(ii); 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 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

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).

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). 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 Evidence and Procedural History

In [REDACTED] 2022, when the Petitioner was 20 years old, the Probate and Family Court of the [REDACTED] Massachusetts (Family Court) issued an order (SIJ order) finding the Petitioner under its jurisdiction acting as a juvenile court under Massachusetts law. The SIJ order stated the Petitioner was 20 years old and unmarried at the time, found the Petitioner to be a minor child under the state laws of Massachusetts and under the jurisdiction of the Family Court acting as a juvenile court, and determining both that it was in the Petitioner’s best interest to remain in the United States and that both his parents had failed to provide for the Petitioner in any way. Based on the SIJ order, the Petitioner filed an SIJ petition in February 2022. The Director issued a notice of intent to deny (NOID), advising the Petitioner that he had failed to establish USCIS consent was warranted because the record did not establish the Family Court had provided any relief from parental abuse, abandonment, or neglect. In response, the Petitioner submitted a copy of the SIJ order and the judgment from the Family Court granting the Petitioner’s request for custody determination, finding that neither parent would have custody of the Petitioner due to neglect or abandonment, and an affidavit by the Petitioner. The Director denied the SIJ petition in September 2022, determining USCIS’ consent was not warranted, as the Petitioner did not establish his petition for SIJ classification was bona fide. Now on appeal, the Petitioner asserts the Director’s denial of his SIJ petition was “arbitrary, capricious, and an abuse of discretion” and cites a recent U.S. District Court decision, *Cosme v. Garland*, --- F. Supp. 3d ---, 2022 WL 3139000 (D.R.I. Aug. 5, 2022), in support.² Ultimately, he maintains he has met all eligibility requirements for SIJ classification, and his petition should be granted.

B. USCIS’ Consent Is Not Warranted

Classification as an SIJ may only be granted upon the consent of USCIS when a petitioner meets all the other eligibility criteria under 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). We do not question the Family Court’s purpose in issuing its order, but 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 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,

² We note U.S. District Court decisions are not binding authority. *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (“A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.”) (quoting 18 J. Moore, et al., *MOORE’S FEDERAL PRACTICE* § 134.02(l)(d), p. 134-26 (3d ed. 2011)); see also *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993) (observing that district court decisions are not binding on the Board of Immigration Appeals).

abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). 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 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, and not primarily to obtain an immigration benefit. The court orders reflect that the Family Court made findings of abandonment or neglect by the Petitioner's parents and determined that reunification with the parents was not viable on that basis, but the record does not establish that the Family 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). 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 Brazil, the Family Court did not order any relief from the abuse or 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 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." *Id.* 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 SIJ order indicated only 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. Likewise, the SIJ order cited to section 3, which 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 SIJ order did not include any such orders or relief decrees. 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.

ORDER: The appeal is dismissed.