



October 11, 2019

PM-602-0175.1

Policy Memorandum

SUBJECT: *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019)

Purpose

This policy memorandum (PM) designates the attached decision of the Administrative Appeals Office (AAO) in *Matter of D-Y-S-C-* as an Adopted Decision. Accordingly, this adopted decision establishes policy guidance that applies to and shall be used to guide determinations by all U.S. Citizenship and Immigration Services (USCIS) employees. USCIS personnel are directed to follow the reasoning in this decision in similar cases.

Matter of D-Y-S-C- addresses USCIS' consent authority in Special Immigrant Juvenile (SIJ) cases. SIJ classification may only be granted upon USCIS' consent to juveniles who meet all other eligibility criteria and establish that they sought the requisite juvenile court or administrative determinations in order to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. USCIS' consent is warranted where petitioners show the juvenile court proceedings granted relief from such parental maltreatment, beyond an order enabling them to file an SIJ petition with USCIS.

Matter of D-Y-S-C- also clarifies that to establish they cannot reunify with one or both of their parents due to abuse, neglect, abandonment or a similar basis, juveniles must provide evidence of a judicial determination that they were subjected to such parental maltreatment under state law. Petitioners bear the burden of establishing the state law applied by the juvenile court. USCIS does not require that the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate directorate channels to the AAO.



U.S. Citizenship
and Immigration
Services

ADOPTED DECISION

MATTER OF D-Y-S-C-

ADMINISTRATIVE APPEALS OFFICE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
DEPARTMENT OF HOMELAND SECURITY

October 11, 2019¹

- (1) Special Immigrant Juvenile (SIJ) classification may only be granted upon the consent of the Secretary of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to juveniles who meet all other eligibility criteria and establish that the requisite juvenile court or administrative determinations were sought to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit.
- (2) Petitioners bear the burden of proof to establish eligibility, including whether USCIS' consent is warranted. The nature and purpose of the juvenile court proceedings is central to whether USCIS' consent is warranted and the agency must consider whether the juvenile court's determinations were sought in proceedings granting relief from parental maltreatment, beyond an order with factual findings to enable an individual to file a petition for SIJ classification.
- (3) To establish that reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law," as section 101(a)(27)(J)(i) of the Immigration and Nationality Act requires, the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law. Petitioners bear the burden of establishing the state law applied in the reunification, dependency or custody, and best-interest determinations.

FOR THE PETITIONER: Bridgette Smith-Lawson, Esquire, Houston, Texas

After child welfare authorities removed her and her siblings from their home, a juvenile court granted custody of the Petitioner to the Texas Department of Family and Protective Services due to her father's

¹ *Matter of D-Y-S-C-* was issued on February 7, 2019, as a non-precedent decision. We reopened the proceedings under 8 C.F.R. § 103.5(a)(5)(i) to revise for designation as an adopted decision.

physical and sexual abuse and her mother's neglect and abandonment. Based on the juvenile court's orders, the Petitioner seeks classification as a special immigrant juvenile (SIJ) pursuant to 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), 1154(a)(1)(G). The Director of the Houston, Texas Field Office (Director) denied the SIJ petition, concluding the Petitioner was not eligible for SIJ classification at the time of filing. On appeal, the Petitioner asserts her eligibility for SIJ classification and submits additional evidence.

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for SIJ classification, juveniles must show that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their 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(c). Juveniles 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 department, or an individual or entity appointed by the state or juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in the juveniles' 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.

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 Homeland Security, through USCIS, when a juvenile meets all other eligibility requirements and establishes that the juvenile court order was sought to obtain relief from parental maltreatment. Section 101(a)(27)(J)(i)-(iii) of the Act. See 6 U.S.C. § 112(b)(1); 8 C.F.R. § 2.1 (specifying the Secretary of Homeland Security's authority to delegate the administration of the immigration laws).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of Honduras, was born in 2000 and entered the United States without inspection, admission, or parole in February 2012. The Petitioner filed her SIJ petition in 2016 and submitted the following evidence: a 2015 Affidavit in Support of Removal by the Texas Department of Family and Protective Services (DFPS) filed with the District Court of Liberty County, Texas (juvenile court); a 2016 *Order Regarding Eligibility for Special Immigrant Juvenile Status* (2016 Juvenile Court Order); and a 2016 DFPS Child Identification Letter.

The Affidavit in Support of Removal states that, in November 2015, DFPS received a report of sexual abuse of the Petitioner by her father, J-S-P-,² which began when the Petitioner was a young child and had continued for years to the date of the report, when the Petitioner was 15 years old. DFPS

² Initials are used throughout this decision to protect the identities of the individuals.

interviewed the Petitioner, who confirmed the report of her father's sexual and physical abuse, both while they were living in Honduras and after their arrival in the United States. DFPS reported that the Petitioner's mother, G-Y-S-C-, was aware of the abuse, but "gave" the Petitioner to her father and remained in Honduras when the Petitioner and her father traveled to the United States. The Affidavit states "due to physical abuse, sexual abuse, neglectful supervision, and physical neglect Child Protective Services is seeking custody of" the Petitioner.

The 2016 Juvenile Court Order was issued based on the court's review of DFPS' motion, the court file, other supporting evidence and arguments of DFPS counsel. The order states, in pertinent part:

By order of this Court on December 18, 2015, the Department [of Family and Protective Services] was named Managing Conservator of [the Petitioner], pursuant to Chapter 262 of the Texas Family Code, Procedures in Suit by Government Entity to Protect Health and Safety of Child. On this basis, this Court finds that [the Petitioner] has been legally committed to or placed under the custody of the Department.

The juvenile court additionally found that, based on the circumstances that necessitated the Petitioner's removal from her father's home by DFPS, as well as subsequent events set forth in the relevant pleadings, testimony, and evidence in the record, the Petitioner's "reunification with one or both of [her] parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law." The court also found that it was not in the Petitioner's best interest to return to her home country of Honduras. The 2016 DFPS Child Identification Letter states the Petitioner "is a child that is currently in the managing conservatorship of Texas Department of Family and Protective Services."

The Director issued a notice of intent to deny (NOID) because the 2016 Juvenile Court Order "merely repeats the language from Section 101(a)(27)(J)(i) of the Act" and does not specify with which parent(s) the Petitioner could not reunify and on what basis (abuse, neglect, abandonment, or a similar basis). The Director also concluded that, although the 2016 Juvenile Court Order referenced a December 2015 court order, the Petitioner did not submit that order or "any other orders to USCIS to establish either dependency on the court or an award of custody." The Director further stated his intent to withhold USCIS' consent to the Petitioner's SIJ classification because the DFPS Affidavit in Support of Removal and the 2016 Juvenile Court Order did not provide "the factual basis for the court's findings." The Director denied the petition after the Petitioner did not respond in a timely manner.

On subsequent motion, the Petitioner, through her DFPS attorney, submitted additional evidence and stated that it took DFPS more time than allotted to obtain the documents requested in the NOID. The motion to reopen was accompanied by: the 2015 DFPS *Petition for the Protection of a Child, for Conservatorship, and for Termination in Suit Affecting the Parent-Child Relationship Order* (SAPCR Petition) filed with the juvenile court; the 2016 *Final Order in Suit Affecting the Parent-Child Relationship* (Final SAPCR Order); and a 2017 *First Amended Order on Motion to Determine Eligibility for Special Immigrant Juvenile Status* (2017 Amended Order).

The 2015 SAPCR Petition requested emergency orders granting DFPS sole managing conservatorship of the Petitioner and her siblings because there was "a continuing danger to the physical health or safety

of the children if returned to the parent” and requested termination of the parental rights of the Petitioner’s mother and father if the Petitioner could not be safely reunified with them. In the resulting Final SAPCR Order, the juvenile court appointed DFPS as permanent managing conservator of the Petitioner, finding that the appointment of her mother or father as managing conservator would not be in her best interest and would significantly impair her physical health or emotional development. The Final SAPCR Order denied the Petitioner’s father custody or visitation because “possession or access by this parent would endanger the physical or emotional welfare of the child.”

In its 2017 Amended Order, the juvenile court affirmed that it appointed DFPS permanent managing conservator of the Petitioner “pursuant to Chapter 262 of the Texas Family Code, Procedures in Suit by Governmental Entity to Protect Health and Safety of Child.” *See generally* TEX. FAM. CODE § 262.001 (Vernon 2017). The juvenile court also found that family reunification was not viable because of the Petitioner’s father’s abuse and her mother’s neglect and abandonment, and that it was not in the Petitioner’s best interest to return to Honduras because her “only potential caretakers in Honduras are her biological parents.”

In dismissing the motion, the Director determined it was untimely, but also reached the merits by concluding that the Petitioner failed to demonstrate eligibility for SIJ classification at the time of filing, as both the 2016 Final SAPCR Order and the 2017 Amended Order were issued after the Petitioner filed her SIJ petition.³ On appeal, counsel asserts that the juvenile court placed the Petitioner under DFPS custody because it determined that she could not reunify with her parents due to their abuse, neglect, and abandonment under Texas law. To further establish the Petitioner’s eligibility at the time of filing, counsel submits the “Order for Protection of a Child in an Emergency,” which the juvenile court issued in November 2015 (2015 Emergency Protection Order).

III. ANALYSIS

A. Dependency and Custody

A juvenile seeking SIJ classification 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. A juvenile court’s dependency declaration or custodial placement must be made in accordance with state law governing such determinations. *See* 8 C.F.R. § 204.11(c)(3).

The Director concluded that the 2016 Juvenile Court Order lacked a qualifying dependency declaration or custodial placement because the order referenced a prior December 2015 order, which the Petitioner did not submit. However, the 2016 Juvenile Court Order explicitly states that DFPS was appointed managing conservator of the Petitioner by prior order of the same court under the child protection provisions of Chapter 262 of the Texas Family Code. On appeal, counsel submits the 2015 Emergency Protection Order, through which the Petitioner became dependent upon the juvenile court and the court determined that: the Petitioner had been removed from her home pursuant to the emergency child protective provisions of section 262.104 of the Texas Family Code, there was a continuing danger to

³ We deem the Director’s decision on the merits to be a favorable exercise of discretion excusing the untimely filing of the motion. *See* 8 C.F.R. § 103.5(a)(1)(i).

the health or safety of the Petitioner if she was returned to her parents, and leaving the Petitioner in the home would be contrary to her welfare. The Emergency Protection Order appointed DFPS temporary sole managing conservator of the Petitioner, appointed an attorney and guardian *ad litem* for the Petitioner, and provided notice of a full adversarial hearing in December 2015. The subsequent 2016 Juvenile Court Order, Final SAPCR, and the 2017 Amended Order all show that the juvenile court retained the Petitioner in DFPS custody pursuant to the child protection provisions of Chapter 262 of the Texas Family Code and then legally committed her to the permanent managing conservatorship of DFPS under section 153.371 of the Texas Family Code.

In these proceedings, the Petitioner bears the burden of establishing eligibility for the immigration benefit sought. *Budhathoki v. Nielsen*, 898 F.3d 504, 508-09 (5th Cir. 2018). As the dependency declaration or custodial placement must be entered in accordance with the state law that governs such determinations, the state law itself is a question of fact that must be proved by the Petitioner to establish eligibility. 8 C.F.R. § 204.11(c)(3); *cf. Matter of Annang*, 14 I&N Dec. 502 (BIA 1973) (discussing a petitioner's burden to prove questions of foreign law).

Here, the Petitioner has established the state law the juvenile court applied in her child welfare dependency proceedings and in appointing conservatorship, which as counsel correctly asserts on appeal, is a qualifying custodial placement for SIJ purposes. Under section 153.371 of the Texas Family Code, a permanent managing conservator is granted rights and duties consistent with physical and legal custody, such as “physical possession,” “care, control, protection, and reasonable discipline” of a child, as well as legal determinations on behalf of a child, including the right to “consent for the child to medical, psychiatric, psychological, dental, and surgical treatment,” “represent the child in legal action,” and “designate the primary residence of the child.” TEX. FAM. CODE § 153.371 (Vernon 2017). *See* Texas Department of Family Services, *Adoption or Permanent Managing Conservatorship* https://www.dfps.state.tx.us/Child_Protection/Adoption/Adoption_or_PMC.asp#whatis (explaining that, “Permanent Managing Conservatorship (PMC) is a legal term in Texas used in child custody cases [and] means that a judge appoints a person to be legally responsible for a child”) (last viewed October 11, 2019).

The juvenile court orders in this case, considered individually and within the context of the totality of the evidence regarding the Petitioner's child welfare proceedings, are relevant, probative, and credible evidence of both a qualifying dependency declaration and custodial placement under section 101(a)(27)(J)(i) of the Act. *See Matter of Chawathe*, 25 I&N Dec. at 376 (explaining that the preponderance of the evidence standard requires examination of each piece of evidence for relevance, probative value, and credibility, both individually and in the aggregate). The Director's conclusion to the contrary is withdrawn.

B. Parental Reunification Determination

A juvenile seeking SIJ classification must also establish that his or her reunification with one or both parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law,

the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law.⁴ *See id.*

The Director decided that the 2016 Juvenile Court Order did not contain a qualifying parental reunification determination because the order merely repeated the language of the Act and did not specify with which parent(s) the Petitioner could not reunify and on what basis (abuse, neglect, or abandonment). The Director concluded the 2016 Final SAPCR Order and 2017 Amended Order did not remedy these deficiencies because they were issued after the SIJ petition was filed and did not establish the Petitioner's eligibility at the time of filing. Again, the Director did not consider the juvenile court orders in the aggregate as evidence of the court's determinations throughout the Petitioner's child welfare proceedings.

When adjudicating an SIJ petition, USCIS must read the juvenile court order(s) as a whole and consider the Petitioner's eligibility based on the preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376. USCIS generally defers to juvenile courts on matters of state law. However, whether a state court order submitted to USCIS establishes a Petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *Budhathoki*, 898 F.3d at 511-12.

In this case, counsel correctly asserts on appeal that Texas district courts acting under the Child Protection provisions of Title Five, Subtitle E of the Texas Family Code must assess whether or not a child can be reunified with his or her parents at the full adversarial hearing following an emergency order and at every subsequent hearing mandated by Texas law. *See* TEX. FAM. CODE § 262.201 *et seq.* (governing full adversary hearing to protect children) and § 263.002 *et seq.* (governing court review of placement of children under the care of DFPS) (Vernon 2017).

The initial 2015 Emergency Protection Order, the 2016 Juvenile Court Order, the 2016 Final SAPCR Order, and the 2017 Amended Order show that the juvenile court repeatedly determined that the Petitioner could not be reunified with her parents due to her father's abuse and her mother's neglect and abandonment pursuant to Chapters 262 and 263 of the Texas Family Code. Because such family reunification was not viable, a determination initially made before the SIJ petition was filed, the juvenile court placed the Petitioner in the custody of DFPS pursuant to section 153.371 of the Texas Family Code, which governs the appointment of a nonparent as the sole managing conservator of a child. Upon *de novo* review, we find the Petitioner has established that the juvenile court made a qualifying determination that she could not reunify with her parents due to her father's abuse and her mother's neglect and abandonment under Texas law. The Director's contrary decision is withdrawn.

C. USCIS' Consent

SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS where, as here, a juvenile meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the

⁴ USCIS does not require that the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification. *See R.F.M. v Nielsen*, 365 F.Supp.3d 350, 382 (SDNY Mar. 15, 2019); *J.L., et al v. Cissna*, 341 F.Supp.3d 1048 (N.D.C.A. 2018), *Moreno-Galvez v. Cissna*, No. 19-321 (W.D.W.A. July 17, 2019), and *W.A.O. v. Cissna*, No. 19-11696 (D.N.J. July 3, 2019).

Act. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, requires the Secretary of Homeland Security to “consent” to the grant of SIJ classification (instead of “expressly consenting” to the juvenile court order, as prior law provided). Pub. L. 110-457, § 235(d)(1)(B), 122 Stat. 5044 (2008). Consistent with legislative history regarding the consent function, USCIS has a policy and past practice of exercising its consent authority by verifying whether SIJ petitions are *bona fide*, meaning that the juvenile court order was not sought primarily to obtain the status of an alien lawfully admitted for permanent residence, rather than to obtain relief from parental maltreatment. *See* section 101(a)(27)(J)(iii) of the Act; H.R. Rep. No. 105-405, at 130 (1997)).

To warrant USCIS’ consent, juveniles must establish that the requisite juvenile court or administrative determinations were sought to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *See* H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement “that neither the dependency order nor the administrative or judicial determination of the alien’s best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect”).

Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS’ consent is warranted and the agency must consider whether the court’s determinations were sought in proceedings granting relief from parental abuse, neglect, abandonment, or a similar basis under state law, beyond an order enabling an individual to file an SIJ petition with USCIS. *See* H.R. Rep. No. 105-405, at 130; *Budhathoki*, 898 F.3d at 511 n. 5 (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ findings); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the juvenile sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the *USCIS Policy Manual* explained).

In this case, the record clearly shows that the nature and purpose of the proceedings before the juvenile court were to place the Petitioner in DFPS custody to protect her from parental abuse, neglect and abandonment. The court exercised jurisdiction over the Petitioner in dependency and custody proceedings as a juvenile under state law with the explicit purpose “to protect [her] from abuse, neglect or abandonment and to make reasonable efforts to implement a permanency plan,” *2017 Amended Order*. The juvenile court removed the Petitioner from her father’s custody, denied him any possession or access to the Petitioner, and appointed DFPS as the permanent managing conservator of the Petitioner “pursuant to Chapter 262 of the Texas Family Code, Procedures in Suit By Governmental Entity to Protect Health and Safety of Child.” *Id.* The juvenile court determined that family reunification was not viable because the Petitioner’s father “began sexually abusing [her] at the age of three (3) and continued to do so until she was removed by Child Protective Services” and her mother neglected and abandoned the Petitioner when she “failed to take protective action and ‘gave’ [the Petitioner] to him.” *Id.* The juvenile court also determined that if she returned to Honduras, the Petitioner’s only possible caretakers would be her parents, the perpetrators of the abuse, neglect, and abandonment.⁵

⁵ *Id.* The 2017 Amended Order states that the Petitioner’s father was deported from the United States following a felony conviction.

The Director initially concluded that USCIS' consent to the Petitioner's SIJ classification was not warranted because the DFPS Affidavit in Support of Removal and the 2016 Juvenile Court Order did not provide "the factual basis for the court's findings," but the Director did not further discuss this conclusion in the dismissal of the Petitioner's motion. Where the juvenile court proceedings involve relief from parental abuse, neglect, abandonment or a similar basis under state law, the record must also contain a reasonable factual basis for each of the requisite SIJ determinations to establish that a petitioner's request for SIJ classification merits USCIS' consent. A reasonable factual basis for the juvenile court's determinations may be shown through, for example, factual findings in the juvenile court order(s), the underlying petition for dependency or custody, other supporting documents submitted to the juvenile court and transcripts or other records of the judicial or administrative proceedings, if available, or affidavits or records attesting to the evidence presented to the juvenile court and consistent with its determinations. *See, e.g., Reyes*, 737 Fed. Appx. at 145-46 (finding USCIS did not abuse its discretion in withholding consent from an SIJ petition when it was unable to verify what facts the state court relied on to support its conclusion).

In this case, the DFPS Affidavit of Removal, which initiated the child protective proceedings, the 2015 SAPCR Petition, the 2015 Emergency Protection Order, the 2016 Juvenile Court Order, the 2016 DFPS Child Identification Letter, the 2016 Final SAPCR Order, and the 2017 Amended Order establish that the relief sought from and granted by the juvenile court was placement in DFPS custody as protection from parental abuse, abandonment and neglect. This evidence provides detailed factual findings by both DFPS and the juvenile court that: the Petitioner's father sexually abused her for 12 years until DFPS removed her from his custody; the Petitioner's mother knew of the abuse, but failed to protect the Petitioner; the Petitioner could not reunify with her parents due to her father's abuse and her mother's neglect and abandonment; and it was not in the Petitioner's best interest to return to Honduras because the only potential caretakers for her there were her parents. The Petitioner has established that her request for SIJ classification merits USCIS' consent.

IV. CONCLUSION

The Petitioner has established that she is eligible for and merits USCIS' consent to a grant of SIJ classification. The Director's decision is withdrawn and the appeal is sustained.

ORDER: The appeal is sustained.

Cite as *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019)