



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

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

In Re: 26480946

Date: JUNE 26, 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 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 Form I-360, concluding that the Petitioner did not establish eligibility for SIJ classification. The matter is now before us on appeal. On appeal, the Petitioner submits a brief with additional evidence and asserts that the Director's decision was in error.

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, 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 U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is

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).

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).

II. ANALYSIS

The record reflects that the Petitioner turned 18 years old in [redacted] 2021. A month later, in [redacted] 2021, the General Court of Justice in the District Court Division of [redacted] North Carolina (District Court) issued a child custody order (SIJ order), finding that it had jurisdiction over the Petitioner’s custody “pursuant to the provisions of North Carolina General Statutes § 50A-201,” jurisdiction of the parties and the subject matter of the proceeding, and jurisdiction to make judicial determinations about the custody and care of juveniles pursuant to sections 50A-201, 50A-204, and 50-13.5(c)(2) of the North Carolina General Statutes. Although the Petitioner was 18 years old at the time, the District Court referred to her as a “minor child” in the SIJ order and stated that it had “continuing jurisdiction of the [Petitioner] despite her reaching the age of 18, due to her continued dependence on [her brother] pursuant to the provisions of North Carolina General Statutes § 50-13.8.” The District Court further found that the Petitioner’s reunification with her parents was not viable due to neglect, and that it was not in her best interest to return to Guatemala, her country of origin, due to the lack of a safe and nurturing home there. The District Court granted sole physical and legal custody of the Petitioner to her brother, upon determination that he was a fit and proper person to have such custody. Shortly thereafter, while she was under 21 years of age, the Petitioner filed the instant Form I-360 (SIJ petition) based on the District Court’s order.

In denying the SIJ petition, the Director determined that the Petitioner did not show that the District Court had jurisdiction over her as a juvenile when it issued the SIJ order, because she was over 18 years old at the time – the age of majority under North Carolina law. The Director concluded that the Petitioner therefore did not meet her burden of proof to demonstrate that her SIJ petition should be approved.

On appeal, the Petitioner asserts that the Director’s decision was in error because, although she was over 18 years of age, the SIJ order specifically states that the District Court had jurisdiction over her under state law due to her continued dependence on her brother to attend school, as well as her inability to speak English and Spanish and to work legally in the United States. The Petitioner avers that because the SIJ order was issued while she was under the age of 21 years and it contains the requisite dependency, custody, parental reunification, and best interest determinations, she has established eligibility for SIJ classification. We have reviewed the entire record, as supplemented on appeal, and conclude that the Petitioner has not overcome the basis for the Director’s adverse decision.

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” in 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 generally* 6 USCIS Policy Manual J.2(C), <https://www.uscis.gov/policy-manual>.

In this case, the Director properly determined that the District Court was not acting as a “juvenile court” when it issued the SIJ order because the Petitioner was 18 years of age at the time and no longer a “child” or “minor” as contemplated by North Carolina law, which 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 they 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 when it issued the SIJ order after her 18th birthday.

The Petitioner asserts that she is nevertheless eligible for SIJ classification because she was under the age of 18 years when the custody complaint was filed with the District Court. She further states that the phrase “age of majority” does not appear anywhere in the SIJ-related regulations, nor do those regulations require SIJ petitioners to have a custody order issued before they reach the “age of majority.” We acknowledge the Petitioner’s assertions; however, the Act specifically requires a dependency or custody order to be 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). We recognize that the Petitioner was a “child” when her custody proceeding commenced, and we do not dispute that the District Court had authority to exercise jurisdiction over her as an incompetent adult and award sole custody over her to her brother. But, as stated, to be eligible for SIJ classification the Petitioner must establish that at the time the District Court entered the SIJ order it exercised jurisdiction over her as a juvenile under state law. *Id.*

The Petitioner argues, citing section 7B-200(a) of the North Carolina General Statutes that “the court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent” to make initial child custody determination, and that section 50-13.8 of the North Carolina General Statutes (section 50-13.8) allows a judge to continue making decisions regarding custody of someone who is over 18 years of age, if the judge determines that the person is mentally or physically incapable of self-support.

As an initial matter, section 7B-200(a) the Petitioner cites pertains to juvenile court proceedings, and there is nothing in the record to indicate that her SIJ order was issued in such proceedings.²

² We note that for purposes of such proceedings the term “juvenile” is defined in relevant part as a “person who has not reached the person’s eighteenth birthday.” N.C. Gen. Stat. Ann. § 7B-101(14).

Furthermore, while the order does reflect that the District Court assumed continuing jurisdiction over the Petitioner's custody pursuant section 50-13.8, that section provides 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." Thus, section 50-13.8 allows for the court's continued jurisdiction in cases where, as the Petitioner acknowledges, a person over the age of 18 years lacks capacity for self-support, rather than because they continue to be considered a juvenile or a minor under state law. Consequently, the reference to section 50-13.8 in the SIJ order is not sufficient to establish that the District Court exercised its jurisdiction over the Petitioner *as a juvenile* after she turned 18 years of age. Furthermore, section 50-13.8 does not provide any exception, implicit or otherwise, for an individual who has reached the age of 18 years to be considered a minor under North Carolina law in juvenile dependency and/or custody proceedings. And, as stated, although the District Court referred to the Petitioner as a "minor child" in the SIJ order, it cited no other state law or authority pointing to the court's jurisdiction over her as a juvenile under state law after she turned 18 years old.

Based on the above, we conclude that the Petitioner has not demonstrated that the District Court had jurisdiction over her 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 her case after she turned 18 years of age. Because the Petitioner is ineligible for SIJ classification on that basis alone, we need not address whether she meets the remaining requirements for such classification, and whether USCIS consent is warranted.³

ORDER: The appeal is dismissed.

³ 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).