



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

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

In Re: 23733674

Date: DEC. 15, 2022

Motion on Administrative Appeals Office 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 denied the SIJ petition and we dismissed the Petitioner's appeal and subsequent combined motion to reopen and reconsider. The matter is now before us on a motion to reopen. 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). Upon review, we will dismiss the motion to reopen.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As discussed in our prior decisions, incorporated here by reference, the [redacted] Family Court in New York issued an order appointing a guardian for the Petitioner in proceedings brought under section 661 of the New York Family Court Act and section 1707 of the New York Surrogate's Court Procedure Act. In a separate *ORDER-Special Immigrant Juvenile Status* (SIJ order), the Family Court determined, among other findings related to SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was "dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court." Additionally, the Family Court found the Petitioner's reunification with his parents was not viable due to abuse and abandonment and that it would not be in his best interest to be removed from the United States and returned to India, his country of nationality. In our decisions on the Petitioner's appeal and prior combined motion, we concluded that the Family Court did not make a qualifying determination that the Petitioner is unable to reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires.

On motion, the Petitioner makes a claim of ineffective assistance against his prior counsel. He states that prior counsel failed to obtain or request a qualifying order from the Family Court which cited or referenced the New York child welfare law upon which the court made its parental reunification determination. He also asserts that prior counsel erroneously argued that the Family Court's citation to section 661 of the New York Family Court Act and section 1707 of the New York Surrogate's Court

Procedure Act related to the parental reunification determination, did not cite the applicable state law in his own brief, and conceded his failure to submit relevant arguments regarding state law to the Family Court. The Petitioner submits evidence that he has complied with the requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), including a personal affidavit explaining his agreement with prior counsel; a copy of the notice he provided to prior counsel about his complaint; and a copy of the complaint he filed with the Grievance Committee of the Appellate Division, Second Judicial Department of the Supreme Court of the State of New York. He requests that in light of prior counsel's ineffective assistance, we reopen this matter in order to allow him to request an amended SIJ order from the Family Court.

We acknowledge the Petitioner's arguments and evidence regarding his claims of ineffective assistance of prior counsel. However, the Petitioner does not submit new evidence on motion to establish his eligibility for SIJ classification. The Petitioner concedes on motion that he has not submitted a Family Court order containing a qualifying determination that his reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. Although he states an intention to petition the Family Court for an amended order containing the qualifying finding, there is no evidence that he has done so or that the Family Court has issued such an order. Also, there is no information in the record about the outcome of his complaint against prior counsel. Because the Petitioner has not provided evidence that the Family Court made a qualifying parental reunification determination under state law, as section 101(a)(27)(J)(i) of the Act requires, he has not met his burden of showing that he is eligible for SIJ classification.

ORDER: The motion is dismissed.