



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

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

In Re: 13866443

Date: JAN. 27, 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 (Director) denied the petition, and we dismissed the subsequent appeal. The matter is now before us on a motion to reconsider.¹ On motion, the Petitioner asserts her eligibility for SIJ classification. We will dismiss the motion to reconsider.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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) of the Act; 8 C.F.R. § 204.11(c). 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. 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).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019), at 5-6. In these proceedings, it is the Petitioner's burden to

¹ The Petitioner filed a Form I-290B, Notice of Appeal or Motion, to appeal our decision dismissing the Petitioner's appeal of the Director's denial. We do not have jurisdiction over appeals of our decisions. However, as the Petitioner's accompanying brief evidences her intention to file a motion to reconsider our appeal decision, we will treat the instant Form I-290 as a motion to reconsider.

establish eligibility for the requested benefit. The petitioner bears 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. Procedural History

The Director denied the SIJ petition, concluding the record did not establish a court had custody over the Petitioner as a juvenile when a guardian was appointed for her, did not contain a qualifying parental reunification determination for the Petitioner, and did not contain a reasonable factual basis for the best interest determination. We dismissed the Petitioner's subsequent appeal, determining the Petitioner is a member of the *R.F.M. v. Nielsen class*, 365 F. Supp. 3d at 377-80 (S.D.N.Y. 2019), but concluding the record did not contain a qualifying parental reunification determination for the Petitioner, and that USCIS' consent to SIJ classification was not warranted.

B. Relevant Facts

In [] 2017, when the Petitioner was 17 years old, the New York Family Court, [] (Family Court), issued an *Order Appointing Guardian of the Person* (guardianship order), in which M-E-O-C-² was appointed as the Petitioner's guardian "until the age of 21. . ." In [] 2017, when the Petitioner was 18 years old, the Family Court issued an order entitled *ORDER-Special Immigrant Juvenile Status* (SIJ order) in which it declared the Petitioner "is 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." The Family Court determined the Petitioner's reunification with her father was not viable as he was "deceased since 2001, and has played no part in [Petitioner's] life." The Family Court further determined that it is not in the Petitioner's best interest to return to Honduras.

Based on the Family Court's SIJ orders, the Petitioner filed her SIJ petition in July 2017.

C. No Qualifying Parental Reunification Determination

In our previous decision, we determined the Petitioner did not demonstrate a qualifying parental reunification was made for her as her SIJ order did not include a legal conclusion that parental death constitutes abuse, neglect, or abandonment, or is legally equivalent to a similar basis under state law. We noted the record contains a copy of a proposed amended SIJ order citing to relevant New York case law and requesting the Family Court render a determination the Petitioner's reunification with her father was not viable due to "abandonment -or a similar basis," as reunification is not possible to his death. However, the proposed order was unsigned and undated.

To be eligible for SIJ classification, the Act requires a juvenile court determination that a juvenile's 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

² Initials are used to protect the privacy of this individual.

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. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6. Although USCIS generally defers to juvenile courts on matters of state law, the determination of 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. *Id.* at 6; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) ("Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose."). The Petitioner bears the burden of proof to establish eligibility, which includes demonstrating the state law the juvenile court applied in its reunification determination. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2.

On motion, counsel for the Petitioner asserts the Family Court applied New York Family Court Act § 664 in determining that reunification with her father is not viable due to a similar basis under state law, as he is deceased. We note New York Family Court Act § 664 relates to camera recording of infants and the language cited to by the Petitioner in her brief appears to correspond to a bill proposing an amendment to New York Surrogate's Court Procedure Act § 1704, which relates to a petition for appointment of guardian for an infant. Counsel additionally cites to New York case law in support of her contention that death constitutes a similar basis in New York. Notwithstanding counsel's arguments on motion, the Family Court's SIJ order does not cite to any New York case law or statutes in support of its SIJ-related findings, citing only to 8 U.S.C. § 1101(a)(27)(J). Further, the SIJ order does not contain the requisite finding that death of a parent constitutes abuse, abandonment, neglect; or a similar basis to abuse, abandonment, or neglect under New York law. And as stated, the record contains a proposed amended SIJ order that is unsigned by the Family Court. Overall, the Petitioner has not established the Family Court made a qualifying parental reunification finding for her.

D. USCIS' Consent

We previously determined the Petitioner had not established USCIS' consent to SIJ classification was warranted as the record did not contain evidence of a reasonable factual basis for the Family Court's best interest determination. On appeal, counsel for the Petitioner asserts the Petitioner merits USCIS' consent because the Family Court made a qualifying best interest determination for her. Counsel alleges that our decision erroneously stated the Family Court intended to render a decision about the Petitioner's removal or deportation rather than whether a placement in Honduras was in her best interest. However, counsel mischaracterizes our prior decision, which does not contain a determination that the record lacks a qualifying best interest determination. Rather, we stated that as Family Court's SIJ order and other submitted evidence lacked evidence of the factors upon which the court relied in making its best interest determination, the record did not include a reasonable factual basis for this determination.

SIJ classification may only be granted upon the consent of DHS, through USCIS, where a juvenile meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS' consent, juveniles must establish that the requisite juvenile court or administrative determinations were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997)

(reiterating the requirement that the court's orders were not sought primarily for the purpose of obtaining the status of an individual lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from parental maltreatment)).

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 juvenile court's determinations were sought in proceedings granting relief from parental maltreatment, beyond an order with factual findings enabling an individual to file an SIJ petition with USCIS. *See id.*; *see also Budhathoki v. Nielsen*, 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 determinations); *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). 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. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 8.

On motion, the Petitioner submits a brief and does not address our determination that the record did not establish a reasonable factual basis for the Family Court's best interest determination. In its SIJ order in relevant part, the Family Court only indicated it is not in the Petitioner's best interest to be removed from the United States and returned to Honduras. And as stated in our previous decision, though the Petitioner's proposed amended SIJ order explains the Petitioner would not have anyone to care for her in Honduras and she would not have a safe home to live, this proposed order is unsigned by the Family Court. On instant motion, counsel for the Petitioner reiterates the claim that the Petitioner would have no one to care for her in Honduras and she would not have a safe home to live, but the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Overall, the Petitioner has not established the record contains a reasonable factual basis for the Family Court's best interest determination so that she merits USCIS' consent to SIJ classification.

III. CONCLUSION

The Petitioner has not overcome the basis of our previous dismissal on motion and has not demonstrated her eligibility for SIJ classification.

ORDER: The motion to reconsider is dismissed.