



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

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

In Re: 16629435

Date: MAR. 8, 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. This matter is now before us on a motion to reconsider. On motion, the Petitioner asserts his eligibility for SIJ classification. Upon review, we will dismiss the motion to reconsider.

**I. LAW**

**A. Motion to Reconsider**

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.

**B. Special Immigrant Juvenile**

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 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

In our prior decision, incorporated here by reference, we determined the Petitioner, a native and citizen of Guatemala, had not demonstrated he merits USCIS' consent to SIJ classification as the record did not contain a reasonable factual basis for the juvenile court's requisite SIJ determinations. Specifically, we concluded the record lacked a reasonable factual basis for the juvenile court's parental reunification and best interest determinations. We determined the record lacked any discussion of the abuse, abandonment, and neglect the Petitioner allegedly suffered in the past, as neither the ORDER GRANTING PETITION FOR CUSTODY BY EXTENDED FAMILY (custody order) nor the PETITION FOR TEMPORARY CUSTODY BE EXTENDED FAMILY (custody petition), or other supporting evidence in the record, described any specific acts or omissions of the Petitioner's parents as relevant to a determination that they abused, abandoned, or neglected him under Florida law. We rejected the Petitioner's claim that Florida law required the juvenile court, in granting the petition for temporary custody, to determine that his parents abused, abandoned, or neglected him as the juvenile court did not cite to or reference section 751.05(3)(b) of the Florida Statutes, which applies only when a parent objects to a petition for temporary custody. Further, the custody order and related petition explained the custody order was sought and granted based on the consent of the Petitioner's parents to the custodial placement. The custody petition specified the custody order was sought pursuant to section 751.03(9) of the Florida Statutes based on the executed consents from the Petitioner's parents, and that his parents did not object to the order.

On motion, the Petitioner does not establish that we erred in our finding the Petitioner had not demonstrated the reasonable factual bases for the requisite court determinations for SIJ classification. Instead, the Petitioner asserts we erroneously concluded that the juvenile court did not cite to or discuss section 751.03 of the Florida Statutes in its custody order as his custody petition requested temporary custody pursuant to "Chapter 751, Florida Statutes." However, the Petitioner appears to both mistakenly equate the juvenile court's custody order with the Petitioner's custody petition erroneously and reference section 751.03 of the Florida Statutes rather than 751.05(3)(b). Upon review and as stated in our previous decision, the juvenile court's custody order does not cite to or reference section 751.05(3)(b) of the Florida Statutes.

The Petitioner further asserts, through counsel, that the executed consent forms for the Petitioner's parents imply his parents are unwilling and unable to care for him, and that the Petitioner testified at a custody hearing that his parents did not want to care for him any longer and had abandoned and neglected him. However, the Petitioner's parents' consent forms contain no assertion or acknowledgement that they were either unwilling or unable to the care for the Petitioner. Further, the Petitioner has provided no evidence in support of counsel's claim regarding his hearing testimony, and the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

The Petitioner also claims that *Matter of D-Y-S-C-*, Adopted Decision 2019-02, which states that the record must contain evidence of judicial determination that a petition was subjected to abuse, abandonment, or neglect undermines USCIS' position that we defer to the juvenile court on matters of state law, and imposes an additional burden on him that does not appear in the Act. The Petitioner also claims that had USCIS adjudicated his SIJ petition within 180 days as required, he may have been able to modify the juvenile court orders to comply with the factual basis requirement or would not have been impacted by *Matter of D-Y-S-C-*. See section 235(d)(2) of the Trafficking Victims Protection and Reauthorization Act (TVPPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (Dec. 23, 2008) (requiring adjudication within 180 days). While we acknowledge the Petitioner's claims and the procedural requirement that such requests be adjudicated within 180 days, we cannot ignore the Petitioner's statutory and regulatory ineligibility and grant his SIJ petition as we lack the authority to waive the requirements of the statute, as implemented by the regulations. *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). As stated, petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the Petitioner has not satisfied his burden of demonstrating that he merits USCIS' consent as he has not demonstrated the record contains reasonable factual bases for the juvenile court's parental reunification and best interest determinations.

Finally, although not addressed in our prior decision, the custody order appears to lack a qualifying determination that the Petitioner's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required. We reserve this issue for any future adjudications associated with the instant SIJ petition.

### III. CONCLUSION

The Petitioner has not demonstrated that our previous decision is based on an incorrect application of law or policy, nor has the Petitioner's motion shown that our prior decision is incorrect based on the evidence before us when we issued the decision. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

**ORDER:** The motion to reconsider is dismissed.