



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

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

In Re: 17347882

Date: May 3, 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 a subsequent appeal and motion to reopen and reconsider. The matter is now before us on a motion to reopen. On motion, the Petitioner submits additional evidence and asserts his eligibility for SIJ classification. We will grant the motion to reopen and sustain the appeal.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other 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.

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). 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).

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 the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is 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). USCIS may also withhold

consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. 8 C.F.R. § 204.11(b)(5). Petitioners bear 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

The Petitioner, a native and citizen of El Salvador, entered the United States without inspection, admission, or parole in September 2008, when he was 12 years old. In [] 2017, when the Petitioner was 20 years old, the [] Probate and Family Court in Massachusetts (family court) issued an ORDER OF SPECIAL FINDINGS AND RULING OF LAW (SIJ order). The family court subsequently issued an AMENDED ORDER OF SPECIAL FINDINGS OF FACTS AND RULINGS OF LAW – *NUNC PRO TUNC* (amended order) in [] 2017, issued by the family court *nunc pro tunc* to the date of the SIJ order. The family court issued an AMENDED ORDER FOR SPECIAL FINDINGS OF LAW on Complaint in EQUITY filed on [] 15, 2017 (second amended order), issued by the family court *nunc pro tunc* to the date of the amended order. On instant motion, the Petitioner submits the family court’s AMENDED ORDER SPECIAL FINDINGS OF FACT AND RULINGS OF LAW on Complaint in EQUITY filed on [] 15, 2017 (third amended order), issued by the family court *nunc pro tunc* to the date of the amended order.

The family court declared the Petitioner to be dependent on it “pursuant to the child welfare laws of the Commonwealth” under “*Recinos v. Escobar*, 473 Mass. 734, 740 (2016); M.G.L. c. 119 § 39M(a). The family court also determined that it is not viable for the Petitioner to reunify with his father due to abandonment “as defined under the Code of Massachusetts Regulations,” as his father “failed to provide any sort of adequate care, emotional support, or safety and security,” and “at no point made any effort to keep a relationship with his son.” The family court cited to “110 C.M.R. § 2.00” and “M.G.L. c. 119 § 39M(b)” in support of its abandonment finding. The family court also found that it is not in the Petitioner’s best interest to return to El Salvador after “[h]aving considered the health, educational, developmental, physical and emotional interest of [Petitioner].” The family court referred the Petitioner to probation “for services to assist with his education, health and welfare, as relief from the parental abandonment and neglect he has suffered,” “[p]ursuant to M.G.L. c. 119 § 39M(d).”

To warrant USCIS’ consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* An example of court-recognized remedial relief includes the recognition of a petitioner’s placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration

benefit. 8 C.F.R. § 204.11(b). *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.*

In the instant matter, USCIS' consent is warranted because the Petitioner has established by a preponderance of the evidence that a primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit. The application of section 39M does not, by itself establish that a juvenile sought relief from parental maltreatment beyond an order enabling the juvenile to file for SIJ classification. However, section 39M provides for certain relief in the form of "orders necessary to protect the child against further abuse or other harm," including complaints for abuse prevention or support, as well as court-provided referrals for "psychiatric, psychological, educational, occupational, medical, dental or social services or protection against trafficking or domestic violence." Mass. Gen. Laws ch. 119, §§ 39M(c)-(d). Here, the family court ordered such relief as its *nunc pro tunc* third amended order includes the court's referral of the Petitioner to probation for "services to assist with his education, health and welfare, as relief from the parental abandonment and neglect he has suffered. . . ." The family court also specifies that this order and the Petitioner's dependency on this Court were intended to assist the Petitioner in establishing residency "for educational services and healthcare purposes."

Overall, the preponderance of the evidence demonstrates that a primary reason the Petitioner sought the juvenile court order was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, rather than primarily to obtain an immigration benefit. Consequently, the Petitioner has demonstrated that he is eligible for and merits USCIS' consent to his SIJ classification.

ORDER: The motion to reopen is granted and the appeal is sustained.