



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

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

In Re: 17503687

Date: MAY 4, 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 Long Island, New York Field Office (Director) denied the petition, and we dismissed a subsequent appeal, motion to reopen and reconsider, and motion to reconsider. The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner submits additional evidence and asserts his eligibility for SIJ classification. Upon review, we will dismiss the motions to reopen and reconsider.

**I. LAW**

A motion to reconsider is based on an incorrect application of law or policy to the prior decision and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 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).

## II. ANALYSIS

### A. Procedural History

The Petitioner filed his SIJ petition in October 2013, which was denied by the Director in April 2014. We remanded the Petitioner's subsequent appeal to the Director in February 2015, requesting certification if the Director's decision were adverse to the Petitioner. In March 2015, the Director issued a decision denying the SIJ petition and certified the adverse decision to us. Upon certification, we affirmed the Director's denial in September 2015. We dismissed the Petitioner's following motion to reopen and reconsider in May 2016. In September 2020, the Petitioner filed a motion to reconsider, which we dismissed as untimely filed. The matter is now before us on a motion to reopen and reconsider.

### B. Untimely Filing

We dismissed the Petitioner's previous motions to reopen and reconsider in May 2016. In our decision, we gave the Petitioner notice that any subsequent motion must be filed within 33 days of the date of dismissal. The Petitioner's following motion to reconsider was filed in September 2020, 1,582 days after the date of dismissal. Accordingly, the Petitioner's motion to reconsider was dismissed as untimely filed.

On instant motion to reopen and reconsider, the Petitioner contends his untimely filing should be excused, as any delay was reasonable and beyond his control. Specifically, the Petitioner claims he was not informed by prior counsel that his SIJ petition was denied in May 2016, and only learned of the denial upon retaining present counsel.

We acknowledge the Petitioner's explanations for the delay in filing his motion to reconsider. However, though failure to file on time "may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner" with respect to a motion to reopen, there is no similar exception for untimely motions to reconsider. 8 C.F.R. § 103.5(a)(1)(i). As such, we cannot excuse the Petitioner's delay in filing his motion to reconsider. We note that our May 2016 dismissal of the Petitioner's motions to reopen and reconsider were sent to both prior counsel and the Petitioner's address of record. And the Petitioner's May 2016 address of record is identical to his current mailing address.

Overall, the Petitioner has not overcome the basis of our previous dismissal and has not demonstrated his untimely motion to reconsider filing is subject to excusal.

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

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