



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

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

In Re: 22180399

Date: NOV. 22, 2022

Motion on Administrative Appeals Office Decision

Form I-360C, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). We then dismissed the subsequent appeal and the following motion to reconsider. The matter is now before us on motion to reopen.

Upon review, we will dismiss the motion to reopen.

I. LAW

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. 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

In December 2020, we issued a decision, incorporated here by reference, dismissing the Petitioner's appeal of the Director's adverse decision. We concluded that, as the Petitioner had not demonstrated by a preponderance of the evidence that her primary purpose in seeking a court order with SIJ-related findings was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, she had not established that USCIS' consent to her SIJ classification was warranted. We then dismissed the Petitioner's motion to reconsider, concluding that she had not demonstrated that we erred in dismissing her appeal based upon the evidence in the record below or shown that our decision was based upon an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3).

At the time of the prior decisions in this case, petitioners were required to show 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.¹ Subsequently, DHS issued a final rule, effective April 7, 2022, amending its regulations at 8 C.F.R. § 204.11 for petitioners who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (March 8, 2022). Pursuant to the 2022 final rule, petitioners must establish that their request for SIJ classification is bona fide, which requires meeting a less restrictive standard of showing 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) (2022). 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).

On motion, the Petitioner asserts that as the new SIJ rule amended the governing the regulations and requirements for SIJ status, it constitutes a set of new facts; she further argues that as her motion to reopen will be pending when the new SIJ rule becomes effective, the motion satisfies the regulatory requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). The Petitioner further contends on motion that under the new SIJ rule, she has established that “a primary reason” that she sought the juvenile court’s order was to obtain relief from parental maltreatment, as required. 8 C.F.R. § 204.11(b)(5). However, the record does not support such a contention.

SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria, section 101(a)(27)(J)(i)–(iii) of the Act, and the request for SIJ classification is bona fide. 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). DHS generally consents to the grant of SIJ classification “[w]here the factual basis for the court’s determinations demonstrates that the juvenile court order was sought to protect the child and the record shows the juvenile court actually provided relief from abuse, neglect, abandonment, or a similar basis under state law.” 6 *USCIS Policy Manual* J.3(A)(2), www.uscis.gov/policymanual. Such relief may include custodial placement, dependency on the court for the provision of child welfare services, and/or other court-ordered or recognized protective or remedial relief. 8 C.F.R. § 204.11(d)(5)(ii)(A) and (B).

In our prior decisions, we acknowledged that in an order entitled *Decree of Special Findings and Fact and Rulings of Law* (initial SIJ order) and the [redacted] 2020 *Amended Order of Special Findings of Fact and Rulings of Law Dated* [redacted] 2017 *Nunc Pro Tunc* (amended SIJ order), the probate and family court in Massachusetts declared the Petitioner to be dependent upon the court when she was 20 years old. However, we explained that there was no evidence that the court ordered relief in the form of “orders necessary to protect the child against further abuse or harm,” as provided for in chapter 119, section 39M(c)–(d) of the Massachusetts General Laws (section 39M). As stated on appeal, while the amended SIJ order stated that the “order shall serve as a basis for [the Petitioner] to establish residency and healthcare as well as enable her to seek any suitable redress allowable by law and protect [her] from any future harm pursuant to the laws of Massachusetts,” absent any evidence of the relief actually

¹ 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.

provided by the court, this is not sufficient to demonstrate that our consent to her request for SIJ classification is warranted. *See* 8 C.F.R. § 204.11(d)(5)(ii) (providing that the juvenile court order(s) or any supplementary evidence must include the relief from parental abuse, neglect, abandonment, or a similar basis under state law granted or recognized by the juvenile court.). In addition, the record lacks evidence that the family and probate court took jurisdiction over her in any prior or related proceeding providing her with any relief or remedy from parental abuse, neglect, abandonment, or a similar basis under state law.

The Petitioner does not offer new evidence on motion related to establish the relief granted or recognized by the family and probate court for parental abuse, neglect, abandonment, or a similar basis under state law. Absent such evidence, considering the totality of the record, the Petitioner has not shown by a preponderance of the evidence, that she has satisfied the evidentiary requirement for USCIS' consent found at 8 C.F.R. § 204.11(d)(5)(ii), a regulation amended by the 2022 SIJ final rule as reflected in the updated USCIS Policy Manual. *See* USCIS Policy Alert PA 202214, *SUBJECT: Special Immigrant Status and Adjustment of Status 2* (June 10, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf>. The Petitioner therefore has not established that USCIS' consent to her request for SIJ classification is warranted under the new SIJ rule. Accordingly, the Petitioner's motion to reopen is dismissed and her SIJ petition remains denied.

ORDER: The motion to reopen is dismissed.