



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

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

In Re: 21024673

Date: NOV. 23, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed the Petitioner's subsequent appeal, concluding the Petitioner did not demonstrate that he merits United States Citizenship and Immigration Services' (USCIS) consent to SIJ classification. The matter is now before us on a combined motion to reopen and reconsider. 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). Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

SIJ petitioners must establish 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 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. *Id.* 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.* In addition, USCIS recognizes that petitioners may have an immigration motive

for seeking a juvenile court order; however, in determining whether consent is warranted, petitioners must 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. 8 C.F.R. § 204.11(b)(5).

As discussed in our decision dismissing the Petitioner's appeal, in [] 2018, when the Petitioner was 19 years old, the [] Probate and Family Court in Massachusetts (family court) issued a DECREE (SIJ order). The family court subsequently issued an AMENDED ORDER OF SPECIAL FINDINGS OF FACT AND RULINGS OF LAW DATED [] 2018 NUNC PRO TUNC (amended order). Among other findings, the family court declared the Petitioner to be "dependent upon this Court for his health, safety, and welfare" pursuant to "G.L. c. 119 § 39M" and determined that reunification with his father was not viable due to neglect and abandonment. The Petitioner filed his SIJ petition in October 2018 based on the family court orders. The Director determined that USCIS' consent was not warranted for SIJ classification, as the court did not order some form of relief to protect the Petitioner from parental abuse, abandonment, neglect, or a similar basis under state law.

In our previous decision, incorporated here by reference, we dismissed the Petitioner's appeal of the Director's denial, finding that the preponderance of the evidence did not establish that the Petitioner sought the family court decree primarily to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than to obtain an immigration benefit. Specifically, we found that the Petitioner had not established the family court provided any protective or remedial relief for maltreatment pursuant to Massachusetts law, nor did he request any other protective or remedial relief such as a custody or guardianship finding. Thus, we determined that USCIS's consent to a grant of SIJ classification was not warranted.

On motion, the Petitioner does not submit any new evidence or assert any new facts in support of his motion to reopen. With his motion to reconsider, he submits a brief and argues that our previous decision erred in finding that his primary purpose in seeking the SIJ order was to obtain an immigration benefit. He contends that because the court orders provide the required SIJ related determinations of juvenile dependency, parental reunification, and best interest, for which there was a reasonable factual basis, USCIS consent is warranted. The Petitioner cites to *Matter of A-O-C-*, Adopted Decision 2019-03, at 7-8 (AAO Oct. 11, 2019), *superseded by the final rule on Special Immigrant Juvenile classification*, 87 Fed. Reg. 13066 (March 8, 2022),¹ and asserts that the family court considered his health, educational, developmental, physical, and emotional interests in issuing the findings and found him dependent on the court. He also asserts that this finding means he is subject to the court's decisions pertaining to his protection, well-being, and care, and further findings, orders, or referrals to support his health, safety, and welfare to remedy the effects of his father's abandonment and neglect. As such, he states that the family court orders established his residency for purposes of healthcare and other services in Massachusetts and to protect him from future harm.

¹ The Petitioner's reliance on this case is misplaced as it has been superseded by the final rule on SIJ classification, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. See Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

The Petitioner further maintains that, to establish eligibility for SIJ classification, a petitioner must have been declared dependent upon a 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 (emphasis added). He contends that the family court's juvenile dependency determination is therefore sufficient to establish his eligibility. We acknowledge that the family court's dependency declaration issued under state law satisfies the requirements of section 101(a)(27)(J)(i) of the Act. However, as stated above, to establish SIJ eligibility, the Petitioner must further show that his request for SIJ classification is *bona fide*, and thereby warranting USCIS' consent, by showing that the court also provided for child welfare services and/or other court ordered or recognized protective or remedial relief from parental maltreatment. 8 C.F.R. § 204.11(d)(5)(ii)(B).

On motion, the Petitioner has not overcome our previous determination to show that a primary reason for *seeking* the juvenile court determinations was to obtain relief from parental maltreatment, as required by 8 C.F.R. § 204.11(b)(5) to establish that consent is warranted. Here, the family court determined that the Petitioner experienced neglect and abandonment by his father and that reunification with his father was not viable on that basis, as required. The amended court order includes the factual basis for the determination and indicates that the findings within the amended order were made "to provide [the Petitioner] any further protections necessary under the laws" of Massachusetts. We also acknowledge that the amended court order includes language stating that the order "shall also serve as a basis" for him to establish residency and seek healthcare in Massachusetts. However, as explained in our previous decision, apart from the required factual findings and judicial determinations by the court required to file a petition for SIJ classification, the Petitioner has not shown that the family court actually ordered or referred him for any child welfare services or otherwise provided him any form of protective or remedial relief from his father's maltreatment. Moreover, the Petitioner has not demonstrated that he requested such services in his motion to the family court requesting the SIJ order, or any other protective or remedial relief for maltreatment under Massachusetts law. Consequently, the Petitioner has not met his burden to demonstrate by a preponderance of the evidence that a primary reason that he sought the juvenile court order was to obtain relief from parental maltreatment, rather than to obtain an immigration benefit. We therefore find no error in our previous determination that the Petitioner has not established that USCIS's consent to a grant of SIJ classification is warranted.

The Applicant has not submitted new evidence or established that our previous decision on appeal was based on an incorrect application of law or USCIS policy or that it was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(2), (3). Accordingly, the Applicant has not overcome our previous determination on appeal and has not demonstrated his eligibility for SIJ classification.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.