



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

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

In Re: 22480903

DATE: Nov. 30, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that U.S. Citizenship and Immigration Services' (USCIS') consent to her request for SIJ classification was not warranted. We dismissed the Petitioner's appeal, and the matter is now before us on a motion to reconsider. Upon review, we will grant the motion and sustain the appeal.

I. LAW

A motion to reconsider must establish that our prior 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

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), (c)(1).¹ 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. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

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).

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

SIJ classification may only be granted upon the consent of the Secretary of 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 establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In [] 2019, when the Petitioner was 20 years old, the Massachusetts Probate and Family Court (Family Court), [] Division, issued a *nunc pro tunc Amended Decree of Special Findings of Fact and Rulings of Law (On Complaint in Equity, filed: December 18, 2017)* (SIJ order), which asserted the court’s jurisdiction over the Petitioner “pursuant to M.G.L. Chapter 119, § 39M” and declared her dependent on the court. The court further determined that the Petitioner’s reunification with her father is not viable due to his abandonment and neglect and that it was not in her best interest to be returned to Guatemala, her country of nationality.

The Director denied the SIJ petition, concluding that the Petitioner did not show that her request for SIJ classification warranted USCIS’ consent as the record lacked a reasonable factual basis for the Family Court’s best interest determination and did not establish that the court provided any form of protective relief from parental maltreatment. Following the Director’s denial of the SIJ petition, the Petitioner submitted on appeal a [] 2020 *Judgment of Dependency* (amended SIJ order). The amended SIJ order clarified the court’s prior SIJ determinations and noted that the Petitioner was referred to probation services and that it was in her best interest to remain in the United States in the care of M-I-L.² In our previous decision on appeal, we withdrew the Director’s conclusion that the record lacked a reasonable factual basis for the best interest determination. However, we nonetheless dismissed the appeal because the Petitioner did not establish that she sought and obtained any protective or remedial relief from parental maltreatment under state law from the Family Court, apart from the court findings enabling her to file an SIJ application with USCIS, and consequently, she did not show that her request for SIJ classification was bona fide and warranted USCIS’ consent.

On motion, the Petitioner submits a brief, reasserts her eligibility for SIJ classification, and maintains that her request for SIJ classification warrants USCIS’ consent.

As stated, SIJ classification may only be granted upon USCIS’ consent, when a petitioner meets all other eligibility criteria and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). To show 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). To establish that USCIS’ consent is warranted, the juvenile court order or supplemental evidence must include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i).

² We use initials to protect the privacy of individuals.

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). 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.* 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.*

On motion, the Petitioner contends that we erred in determining that the record did not establish that she sought the Family Court orders to obtain protective relief from her father's maltreatment and that the court granted such relief. Specifically, the Petitioner asserts that she requested and was granted relief in the form of the court's paternity adjudication that provided her relief from her father's abandonment and neglect.

We agree with the Petitioner that the court-ordered paternity adjudication in this case constitutes a form of protective or remedial relief from parental maltreatment. The Family Court here determined that the Petitioner's father abandoned and neglected her. The record reflects that when the Petitioner's father contested paternity after the Petitioner brought an equity complaint against him requesting post-minority financial support and SIJ related determinations, the Petitioner sought to establish paternity and the court ordered her father to comply with a stipulated paternity test and thereafter adjudged him to be the Petitioner's biological father "pursuant to M.G.L. c. 209C § 3 and § 17." *See* 8 C.F.R. § 204.11(d)(5)(ii) (stating that in determining whether USCIS' consent is warranted, the juvenile court order or supplemental evidence must show the relief from parental maltreatment that the court granted or recognized). The record therefore sufficiently shows that the Petitioner sought and obtained protective relief from her father's neglect and abandonment in the form of a paternity test and a court order identifying her biological father, which allows her to pursue other avenues of relief from her father's maltreatment, as she asserts on motion. Accordingly, the Petitioner has overcome our previous determination that she did not establish that she sought and obtained protective or remedial relief from her father's maltreatment.

The record further shows that the Family Court made the requisite SIJ related determinations regarding juvenile dependency and/or custody, parental reunification, and best interest and establishes a factual basis for the court's determinations. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5), (d)(5)(i). The Petitioner therefore has shown, by a preponderance of the evidence, that a primary reason she sought the court orders was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that she was granted such relief under applicable state law, as evidenced by the court-ordered paternity adjudication.³ Accordingly, the Petitioner has established that her request for SIJ classification warrants USCIS' consent under the Act.

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

³ The Petitioner also maintains that the Family Court's probation referral for various services in the 2020 SIJ order is a form of protective relief from her father's maltreatment for consent purposes. Given our determination that the paternity adjudication by the court constitutes protective relief from parental maltreatment, we decline to reach this argument.