



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 20233800

Date: OCT. 06, 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 a subsequent appeal and a motion to reopen. The matter is now before us on a second motion to reopen. On motion, the Petitioner submits a brief asserting his eligibility for SIJ classification and an amended nunc pro tunc decree from the probate and family court. Upon review, we will grant the motion to reopen and sustain the appeal.

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 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) of the Act; 8 C.F.R. § 204.11(b).¹

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). Petitioners bear the burden of proof

¹ The Department of Homeland Security issued a final rule, 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).

to demonstrate their eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

We incorporate our prior decisions by reference and will repeat only certain facts as necessary here. In [redacted] 2017, when the Petitioner was 19 years old, the [redacted] Massachusetts Probate and Family Court (Court) issued an order entitled Order of and Special Findings of Fact and Ruling of Law (initial SIJ order) in which it declared the Petitioner to be dependent on the Court and determined that reunification with the Petitioner's father was not viable due to abandonment and neglect. The Court further determined that it would be in the Petitioner's best interests to remain in the United States in the care of his mother.

Upon review of the record, the Director dismissed the Petitioner's SIJ petition. In dismissing the appeal, we determined that the Petitioner did not establish that he is eligible for and merits USCIS' consent to a grant of SIJ classification. Specifically, we found that neither the initial SIJ order nor the subsequent orders issued by the Court established that the Petitioner sought relief from parental maltreatment or that the Court provided relief or remedy from abandonment or neglect.² In his subsequent motion, the Petitioner submitted a [redacted] 2020 order entitled Decree of Special Findings of Fact and Rulings of Law (second amended decree), a nunc pro tunc order, effective retroactively to the date of the initial SIJ order. The second amended decree contained additional language regarding the Petitioner's care and supervision by his mother and stated that, "[i]f [the Petitioner] needs to be referred to probation services in the future, the Court will so order."

In dismissing the motion, we determined the Petitioner did not establish that the second amended decree provided him with any actual protective or remedial relief pursuant to the Massachusetts child protection provisions or any other Massachusetts law, apart from findings enabling him to file an SIJ petition with USCIS. Specifically, the second amended decree referred to the Court's capacity to issue an order providing services prospectively, should the Petitioner need them. Additionally, the Court observed that the Petitioner lived "under the care and supervision of his mother," but did not order any placement of the Petitioner under the laws of Massachusetts. As a result, we concluded USCIS' consent was not warranted because the preponderance of the evidence did not demonstrate that the Petitioner sought the juvenile court order to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, rather than primarily to obtain an immigration benefit.

III. ANALYSIS

SIJ classification may only be granted upon the consent of DHS, through USCIS, when petitioners meet all the other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS' consent, juveniles 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. *Id.*; 8 C.F.R. § 204.11(b)(5). A declaration of dependency, absent any evidence that actual relief

² On [redacted] 2017, the Court issued an order entitled Decree of Special Findings of Fact and Rulings of Law. On [redacted] 2017, the Court issued an order entitled Amended Decree of Special Findings of Fact and Rulings of Law, a nunc pro tunc order, effective retroactively to the date of the initial SIJ order.

from parental maltreatment was granted, is generally not sufficient to warrant USCIS' consent. 8 C.F.R. § 204.11(d)(5).

With the instant motion to reopen, the Petitioner submits an [] 2021 nunc pro tunc order entitled Amended Special Findings of Fact and Rulings of Law (third amended order) issued by Court which is effective retroactively to the date of the initial SIJ order. The third amended order restates the majority of the prior orders, with the addition of the following pertinent language in bold:

4. Having considered the health, educational, developmental, physical, and emotional interests of [the Petitioner], this Court determines that it is not in [the Petitioner's] best interest to return to his country of nationality, Guatemala. See, e.g. *Custody of Kali*, 439 Mass. 834, 843-45 (2003) (in making a best interest determination, a judge must identify and weigh the pertinent factors). It is in the best interest of [the Petitioner] to remain in the care and supervision of his mother, continue his education, and not return to Guatemala. **The Petitioner is thus placed under his mother's care and supervision. This Court refers [the Petitioner] to the [] Probation Department for social and occupational services, to remedy and mitigate the parental underinvestment that he was a victim of."**

5. This order is entered in the Court's capacity as a court that has the authority to make child welfare determinations, including legal conclusions about the viability of a child's reunification with his parents. G.L. c. 119 § 39M; see also *Guardianship of Penate*, 477 Mass. 268, 274 (2017). The above findings were made to provide relief from the abandonment and neglect of [the Petitioner] by his father, to provide for his safety and well-being, to allow him to become eligible for health care in Massachusetts, and to protect [the Petitioner] from further neglect and harm, in accordance with Massachusetts law.

In our prior decisions, we determined that USCIS' consent was not warranted because the record did not show that the juvenile court's determinations were made in connection with proceedings granting some form of relief or remedy from Petitioner's father's abandonment and neglect beyond the dependency declaration and factual findings that enabled him to file for SIJ classification. Based upon the evidence submitted with the instant motion, the Petitioner has overcome our prior determination and established, by a preponderance of the evidence, that he sought the juvenile court orders to obtain relief from parental abandonment and neglect and that the Court, in fact, granted such relief. Consequently, the Petitioner's request for SIJ classification merits USCIS' consent under section 101(a)(27)(J)(iii) of the Act.

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