



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 21123726

Date: OCT. 11, 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), and we dismissed a subsequent appeal and motion to reopen and reconsider. The matter is now before us on a second motion to reopen and reconsider. On motion, the Petitioner asserts that he is eligible for SIJ classification. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our 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 proceedings at the time of the decision. *Id.* at § 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) of the Act; 8 C.F.R. § 204.11(b).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. 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).

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),

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).

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 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 2017, the [REDACTED] Massachusetts Probate and Family Court (Family Court) issued an order entitled Decree and Order for Declaratory Relief and Special Findings (initial SIJ order) in which it declared the Petitioner to be dependent on the Court and determined that reunification with the Petitioner's parents was not viable due to abuse, neglect, and abandonment. In 2020, the Family Court issued a nunc pro tunc order entitled Amended Judgement and Decree of Special Findings of Fact and Rulings of Law (amended SIJ order), effective retroactively to the date of the initial SIJ order. The amended SIJ order stated, in pertinent part, that the Petitioner “is declared dependent upon this court and this court appoints his aunt, [M-D-],² to continue providing protection and care,” and “has shown for purposes of SIJ status eligibility, that he experienced abuse, neglect, or abandonment by one of both parents, it follows that the child is on [sic] the Probate and Family Court for the opportunity to obtain relief.”

In dismissing the Petitioner's appeal and motion to reopen and reconsider, we found that the Petitioner did not establish that the Family Court provided him with any actual protective or remedial relief pursuant to Massachusetts child protection provisions or any other Massachusetts law, apart from findings enabling him to file an SIJ petition with USCIS.

III. ANALYSIS

On motion, the Petitioner contends that we misconstrued the Act's definition of a special immigrant juvenile by concluding that a Petitioner must establish that they have been declared dependent on a court and that the court provided some form of placement, supervision, services or other relief in connection with the finding of dependency.

As the Petitioner points out, and as stated above, 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). However, to establish that the dependency declaration is bona fide, and thereby warranting USCIS' consent, the dependency declaration should also provide for child welfare services, and/or other recognized protective or remedial relief. 8 C.F.R. § 204.11(d)(5)(ii)(B). Here, the Court acknowledged that the Petitioner experienced abuse, neglect, or abandonment, but made no further determinations or provisions for

² We use initials to protect the privacy of individuals.

intervention, protective or remedial relief, from the state of Massachusetts – except for a reference to an “opportunity to obtain relief.” Further, as we noted in our prior decision, the record does not establish that the Family Court formally placed the Petitioner in the physical or legal custody of his aunt, instead, the Family Court stated that it appointed the Petitioner’s aunt to “continue providing protection and care,” and the legal significance of this language, if any, is unclear. 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). Our review here shows the Family Court’s order did not grant relief from parental maltreatment.

The Petitioner has not presented new facts establishing his eligibility for SIJ classification. Further, the Petitioner has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3). Therefore, he has not established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.