



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

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

In Re: 20213799

Date: OCT. 18, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) and we dismissed the subsequent appeal. The Petitioner filed a combined motion to reopen and to reconsider, which we also dismissed. The Petitioner has filed a second combined motion to reopen and to reconsider and submits a brief and an affidavit in support. Upon review, we will dismiss the motions.

I. LAW

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).¹

A motion to reopen must state new facts to be proved 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; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). 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

We herein incorporate our decisions on appeal and on motions and highlight the below facts for our analysis of the instant motion. In 2016, when the Petitioner was 20 years old, the Family Court in New York issued an order appointing a guardian for him in guardianship proceedings

¹ The Department of Homeland Security (DHS) 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).

brought under section 661 of the New York Family Court Act and section 1707 of the New York Surrogate's Court Procedure Act. In a separate order titled "Order-Special Juvenile Status" (SIJ order) the Court determined, among other things, that "in accordance with 8 U.S.C. § 1101(a)(27)(J)" reunification with the Petitioner's parents was not viable because the birth father died when the Petitioner was 12 years old and he was abandoned by his birth mother when he was five years old. In July 2016, the Petitioner filed his SIJ petition and included a copy of his underlying guardianship petition to the Court. The Director denied the SIJ Petition, identifying multiple ineligibility grounds, and the Petitioner appealed.

In our decision on appeal, we concluded the Petitioner had overcome some grounds for the Director's denial,² but had not established that the Court made a qualifying parental reunification determination due to abuse, neglect, abandonment, or a similar basis under state law. Neither the transcript of proceedings,³ wherein the Court made its determination on the record, nor in the resulting SIJ order did the Court reference state law with respect to its parental reunification determination. Rather, the SIJ order cited to federal immigration law. We acknowledged that the memorandum of law, filed with the Petitioner's guardianship petition to the Court, discussed that death can be a basis for finding that a juvenile cannot reunify with a parent pursuant to New York case law. However, we explained that the Court did not find that the Petitioner's father's death amounted to abuse, neglect, abandonment, or a similar basis under state law. We further noted that the guardianship petition also did not provide a legal basis under state law for the Court's determination that the Petitioner was abandoned by his mother. The Petitioner filed a combined motion to reopen and to reconsider. We found no error in our analysis and denied the Petitioner's combined motions, noting that inconsistencies in the guardianship petition made it unclear whether it was fully accurate with respect to the Petitioner.

In the instant combined motion, the Petitioner reasserts that the Court made a qualifying parental reunification determination and submits a new affidavit and a brief in support. However, the affidavit discusses the Petitioner's life in India and does not provide new evidence that the Court made a qualifying parental reunification determination.⁴

In his brief, the Petitioner argues that we should read the SIJ order as a whole. He asserts that by appointing a guardian under New York law, the Court also "indicated" its parental reunification determination was also made under state law. The Petitioner does not cite to any relevant authority in

² Subsequent to the filing of the Petitioner's appeal, the District Court for the Southern District of New York issued a judgment in *R.F.M v. Nielsen*, No. 18 Civ. 5068 (S.D.N.Y. April 8, 2019, amended May 31, 2019) and we concluded that the Petitioner had established he was a member of the R.F.M class.

³ The Petitioner provided a transcript of the guardianship proceedings on appeal.

⁴ The Petitioner, in an affidavit to U.S. Citizenship and Immigration Services (USCIS) and in sworn testimony to the Court, stated his mother abandoned him when he was five years old and he had no one to care for him in India. The Petitioner's affidavit submitted with the instant motion asserts that his mother remarried and abandoned him when he was 12 years old. He says he was cared for by a distant relative and he worked to save enough money to come to the United States, with the help of his relative. These inconsistencies raise concern with the overall credibility of the Petitioner's statements, whether the Court's abandonment and best interest determinations were made with accurate information, and, while not reached in this decision, whether the Petitioner's request for SIJ classification is bona fide. See 8 C.F.R. § 204.11(b) (providing that SIJ classification may only be granted upon USCIS' consent, which may be withheld if evidence materially conflicts with the eligibility requirements and establishes that the Petitioner's request for SIJ classification was not bona fide). To the extent the Petitioner decides to continue to pursue SIJ classification, he may need to explain these inconsistencies in the record.

support of his argument. Here, the Court determined that parental reunification was not viable because the Petitioner was abandoned by his mother and his father died. Pursuant to the implementing regulations for SIJ classification, the SIJ order must make the requisite judicial determinations under applicable state law to establish eligibility. 8 CFR § 204.11(c)(3); see generally 6 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policymanual>, (explaining, as guidance, that the order should use language establishing that the specific judicial determinations were made under state law). The Court's determination did not use language establishing that the Petitioner was abandoned under state law. Further, when a juvenile court determines parental reunification is not viable due to a basis similar to abuse, neglect, or abandonment, the petitioner must provide evidence of how the basis is legally similar to abuse, neglect, or abandonment under state law. 8 C.F.R. § 204.11(d)(4). Here, the Court stated that the Petitioner's father was dead but did not draw a legal conclusion that death is a similar basis under New York law to abuse, neglect, or abandonment. See generally 6 USCIS Policy Manual J.3(A)(1) (explaining, as guidance, a legal conclusion from the juvenile court is required to establish that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law). In our analysis on appeal, we considered documents related to the guardianship proceedings. See generally *id.* (explaining, as guidance, that a qualifying juvenile court determination may be met if the petitioner submits supplemental evidence including state law citations considered by the court). Based on our review, we concluded that the underlying guardianship petition did not provide a legal basis under state law for the Court's abandonment determination. While the memorandum of law discussed that death can be a basis for the court to determine that reunification is not viable, it did not assert death was a similar basis to abuse, neglect, or abandonment under state law, nor did it explain how death was equivalent to abuse, neglect, abandonment, or similar under state law.

The Petitioner does not present new facts sufficient to establish his eligibility for SIJ classification, as required under 8 C.F.R. § 103.5(a)(2). 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).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.