



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

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

In Re: 19797086

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 (Director) denied the petition, concluding that USCIS' consent to SIJ classification was not warranted. The Petitioner filed a subsequent appeal, which was summarily dismissed. The matter is now before us on a combined motion to reopen and reconsider. Upon review, although the Petitioner has established that a brief and basis for his appeal was filed, the motions will be dismissed as ultimately the Petitioner has not established that USCIS' consent to SIJ classification is warranted.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other 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 U.S. Citizenship and Immigration Services (USCIS) 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.*

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 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. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

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).

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

II. ANALYSIS

A. Relevant Facts and Procedural History

In [REDACTED] 2018, when the Petitioner was 20 years old, the Massachusetts Probate and Family Court, [REDACTED] Division (Family Court) issued an order titled *FINDINGS OF FACTS and RULINGS OF LAW* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner’s custody “continues under the jurisdiction of this Court.” The Family Court further found that “reunification with the [Petitioner’s] birth mother . . . is not possible . . . due to [the Petitioner’s] mother’s death,” and, “reunification with [the Petitioner’s] birth father . . . is not possible for [the Petitioner] due to abandonment and neglect by his father.”² and that it was not in his best interest to be removed from the United States and returned to Guatemala, his country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in February 2018. While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID), and the Petitioner responded timely. In his response to the NOID, the Petitioner submitted a brief and a copy of his affidavit submitted to the Family Court. After receiving the Petitioner’s response to the NOID, the Director determined that the SIJ order did not indicate whether the court provided some form of relief to protect the Petitioner from parental abuse, abandonment, supervision, or services in connection with the finding of dependency. Therefore, the Director could not determine if the Petitioner sought the SIJ order primarily to obtain an immigration benefit or relief from parental mistreatment and held that the Petitioner did not warrant USCIS’ consent. The Petitioner subsequently filed an appeal, which we summarily dismissed, as it did not appear that a brief had been filed in support of his appeal. The Petitioner has overcome this determination.

On motion, the Petitioner submits a brief. He argues that USCIS does not have the authority to second-guess the lawfully followed court procedure, findings, and orders of a state court. He further contends that section 101(a)(27)(J) of the Act clearly and unambiguously set forth eligibility for SIJ status and USCIS’ own procedures prevent it from second guessing a qualified state court order. The Petitioner

² Although not addressed in the Director’s decision, the SIJ order appears to lack a qualifying finding regarding parental reunification. The record must contain evidence of a judicial determination that the Petitioner was subjected to such maltreatment by one or both parents *under state law* and the Petitioner bears the burden of proof to establish the state law the juvenile court applied in making this determination. See 8 C.F.R. § 204.11(c)(1)(ii). The SIJ order does not cite to any state law. However, since the SIJ petition was denied on consent, and we agree with the Director’s findings, we will not address the issue further.

points to *Recinos v. Escobar* to demonstrate that a dependency determination does not require some additional form of relief for a court to declare a juvenile dependent on the court. *See* 473 Mass. 743, 744 (Mass. 2016). Further, the Petitioner states that when USCIS seeks evidence to establish a factual basis of the Family Court’s filings, it violates his right to due process.³ The Petitioner purports that the Director’s adverse decision is completely frivolous, capricious, and completely ignores the controlling federal statute.

B. USCIS’ Consent

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). We do not question the Family Court’s purpose in issuing its orders, but here, USCIS’ consent is not warranted because the Petitioner has not established that a primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit.

To warrant USCIS’ consent, juveniles must establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought “primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect”). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS’ consent is warranted. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ findings).

On motion, the Petitioner argues that USCIS does not have the authority to second guess the Family Court and act as a factfinder, and the Director erred in finding that USCIS’ consent was not warranted because there was no indication that the SIJ order provided some form of relief to protect the Petitioner from parental abuse, abandonment, neglect, or a similar basis under state law. The Petitioner argues that *Recinos v. Escobar* demonstrates that a dependency determination does not require some additional form of relief such as a custodial placement, supervision, or services in connection with the finding of dependency. *See* 473 Mass. at 743-744. The Petitioner appears to be conflating the requirements for a dependency determination with the requirement to show that he warrants USCIS’ consent. Since the Director did not make an adverse determination regarding the SIJ order’s dependency determination, this argument is not relevant.

However, the Petitioner has not established that a primary reason he sought the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than to obtain an immigration benefit. USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS’ consent, the requisite SIJ determinations must be made under state law in connection with proceedings in which a petitioner

³ We note that there are no due process rights implicated in the adjudication of a benefits application. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) (“We have never held that applicants for benefits, as distinct from those already receiving them, have legitimate claim of entitlement protected by Due Process Clause of Fifth or Fourteenth Amendment”). Therefore, this argument is moot.

seeks and is granted some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law, rather than, as in this case, requesting only findings relating to an immigration benefit under federal law.

In our review, we note that a dependency declaration can be relief in some cases, but alone, as in the Petitioner's case, it is not enough to show that consent is warranted without evidence of "dependency on the court *for the provision of child welfare services and/or other court-ordered or court-recognized protective or remedial relief.*" 8 CFR § 204.11(d)(5)(ii)(B) (emphasis added). However, the Petitioner has not established that he requested the Family Court to provide any protective or remedial relief for maltreatment pursuant to the Massachusetts child protection provisions or any other Massachusetts law, apart from findings enabling him to file an SIJ petition with USCIS. The Petitioner argues that the Family Court "held a hearing, heard testimony, and made specific findings and orders based on the information presented to the court." The Petitioner further asserted that the issuance of the SIJ order was "based on the abundant evidence presented in court." However, aside from the SIJ order and the Petitioner's affidavit, there is no other evidence in the record, such as the underlying petition, documents submitted to the Family Court supporting the SIJ order, court transcripts, affidavits summarizing the evidence presented to the court, or other records that indicate what the Petitioner told the court regarding the abandonment and neglect by his father.⁴ Further, the Family Court did not issue any orders or referrals to the Petitioner to support his health, safety, and welfare under the 39M provisions as relief from parental maltreatment as found under state law. *See* Massachusetts General Laws, chapter 119, section 39M.

Overall, the preponderance of the evidence shows that the Petitioner has not established that a primary reason he sought the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than to obtain an immigration benefit. Consequently, USCIS' consent to a grant of SIJ classification is not warranted.

III. CONCLUSION

As discussed above, the Petitioner has not demonstrated that he warrants USCIS' consent to a grant of SIJ classification. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

⁴ The Petitioner further argues in his brief that he could not locate "any authority permitting USCIS to seek evidence to establish a factual basis of the court findings." However, the regulations indicate that "[f]or USCIS to consent, the juvenile court order(s) and any supplemental evidence submitted by the petitioner must include the following: (i) [t]he factual basis for the requisite determinations . . . ; and (ii) [t]he relief parental abuse, neglect, abandonment, or a similar basis under State law granted or recognized by the juvenile court." 8 C.F.R. § 204.11(d)(5). *See also* 6 *USCIS Policy Manual* J.3(A)(2), which states, "[i]f a petitioner does not provide a court order that includes facts that establish a factual basis for all of the required determinations, USCIS may request evidence of the factual basis for the court's determinations." <https://www.uscis.gov/policy-manual/>.