



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

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

In Re: 21599636

Date: OCT. 19, 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 the Petitioner's subsequent appeal. The matter is now before us on a combined motion to reopen and motion to reconsider. 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). Upon review, we will dismiss the motions.

**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. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. 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**

In [redacted] 2017, when the Petitioner was 20 years old, the Probate and Family Court (juvenile court) in [redacted], Massachusetts, issued a *Decree of Special Findings of Fact and Rulings of Law* (SIJ order), in which it declared the Petitioner to be dependent on the court "in relation to his complaint in equity until the Special Immigrant Juvenile Process is complete." Additionally, the juvenile court determined that the Petitioner's reunification with his father is not viable due to abuse, abandonment, and neglect, and it is not in his best interest to return to Ecuador, his country of nationality. The Director denied the SIJ petition and we dismissed the Petitioner's appeal based on a determination that he had not established that the consent of U.S. Citizenship and Immigration Services (USCIS) was warranted. In our decision on appeal, we explained that the record did not establish that the juvenile court ordered any relief from parental maltreatment, beyond a dependency declaration and special

findings allowing the Petitioner to seek SIJ classification, that would support a determination that USCIS' consent is warranted.

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. At the time of the prior decisions in this case and when the Petitioner filed the instant combined motion, petitioners were required to show that the requisite juvenile court or administrative determinations were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. Subsequently, DHS issued a final rule, effective April 7, 2022, amending its regulations at 8 C.F.R. § 204.11 for petitioners who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (March 8, 2022). Pursuant to the 2022 final rule, petitioners must establish that their request for SIJ classification is bona fide, which requires meeting a less restrictive standard of showing 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) (2022). 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).

On motion, the Petitioner argues that he sought the juvenile court orders “to gain relief from his parents’ neglect and not solely to obtain an immigration benefit.” He submits an amended order, issued in [REDACTED] 2021 but dated *nunc pro tunc* to the date of the original SIJ order, which counsel alleges “clarifies the 2017 order showing the relief sought was not solely for immigration purposes.” Counsel further states that the amended order “articulates that its dependency order provides [the Petitioner] with relief from neglect by his parents and specifically for healthcare benefits stemming from that neglect.” Counsel explains that because the Petitioner is dependent on the juvenile court, “he is subject to decisions pertaining to his protection, well-being, and care, and findings, orders, or referrals to support his health, safety, and welfare and remedy the effect of his parents’ neglect.”

The amended order specifies that the Petitioner is a child under chapter 119, section 39M of the Massachusetts General Laws and that pursuant to section 39M, “the court has jurisdiction to make determinations about the dependency, care, and well-being of youth under the age of twenty-one.” Furthermore, the amended order notes that the Petitioner “is dependent on the Court for the purposes of these proceedings.” The amended order reiterates that the Petitioner’s reunification with his father is not viable due to abuse and neglect under Massachusetts law because his father “did not provide for any of his needs including healthcare and education,” and that it is not in his best interest to return to Ecuador. The Petitioner also submits on motion the first page of his *Motion to Amend/Clarify Decree Nunc Pro Tunc* (motion for clarifying order), in which he requested the court make special findings “because they are prerequisite findings . . . required in order to find a pathway to self-sufficiency, remedy the physical abuse he suffered at the hands of his father, and establish his eligibility to apply for Special Immigrant Juvenile Status due to the abuse . . . .” The remaining pages of the motion for clarifying order are not in the record.

Because the Petitioner filed his combined motion prior to the effective date of the final rule, he does not argue that he has established that USCIS' consent is warranted pursuant to the less restrictive requirement articulated there. He has submitted new evidence on motion, in the form of an amended order, sufficient for us to reopen and consider that evidence. 8 C.F.R. § 103.5(a)(2). However, even considering the Petitioner's arguments and evidence pursuant to the 2022 final rule, the record does not establish that a primary reason the Petitioner sought the juvenile court's order was to obtain relief from parental maltreatment, as required. 8 C.F.R. § 204.11(b)(5). Contrary to counsel's assertion, the amended order does not indicate that the juvenile court ordered any relief to protect the Petitioner from his father's abuse and neglect. The amended order states that the Petitioner's father did not provide for his needs, "including healthcare and education," but does not order any "healthcare benefits stemming from that neglect," as counsel alleges. Although both the original and amended orders indicate that the Petitioner is dependent upon the juvenile court, and the motion for clarifying order states that he requested the special findings "in order to . . . remedy the physical abuse he suffered," neither order reflects that the court actually provided him with any relief from parental maltreatment under Massachusetts law. We recognize that section 39M allows courts to issue certain relief in the form of "orders necessary to protect the child against further abuse or other harm," including complaints for abuse prevention or support, as well as court-provided referrals for "psychiatric, psychological, educational, occupational, medical, dental, or social services . . ." but the evidence does not establish that the court did so in this particular case.

Although the Petitioner provides an amended order and a portion of the motion for clarifying order on motion, he has not presented new facts or evidence sufficient to establish 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.