



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 18159494

Date: SEPT 14, 2022

Appeal of National Benefits Center 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 subsequently dismissed her appeal of that decision. The matter is now before us on a combined motion to reopen and reconsider. On motion, the Petitioner submits additional evidence and asserts that she is eligible for SIJ classification. 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). 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 decision by reference and will repeat only certain facts as necessary here. In [REDACTED] 2017, when the Petitioner was 19 years old, [REDACTED] Massachusetts Probate and Family Court (Court) issued an order entitled Decree and Order for Declaratory relief and Special Findings (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 and neglect. The SIJ order further stated that it would not be in Petitioner's best interest to return to Guatemala, her country of nationality. On the same date, the Court issued a second order entitled Findings of Fact and Rulings of Law which stated that the Court's jurisdiction "shall continue and not expire until the completion of the Special Immigrant Juvenile process." Based on the initial SIJ order, the Petitioner filed her SIJ petition in May 2017.

The Director denied the Petitioner's SIJ petition, concluding that the Petitioner did not demonstrate that she warrants USCIS' consent because the orders issued by the Court did not provide her with any protective or remedial relief, apart from determinations enabling her to file an SIJ petition with USCIS.

In our prior decision, we acknowledged the Petitioner's claim that the Court placed her in the care of her brother; however, we found that the preponderance of the evidence did not demonstrate that the Petitioner sought, and the Court granted, relief from abuse, neglect, abandonment, or a similar basis under state law apart from the special findings necessary for her request for SIJ classification. Therefore, we concluded that USCIS' consent is not warranted.

III. ANALYSIS

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

With the motion to reopen, the Petitioner submits a [REDACTED] 2021 nunc pro tunc order entitled Amended Special Findings of Fact and Rulings of Law (Amended SIJ Order) issued by Court which is effective retroactively to the date of the original SIJ order. In the Amended SIJ Order, citing section 39M of Chapter 119 of the Massachusetts General Law, the Court asserts jurisdiction to make "decisions

concerning the protection, well-being, care and custody of a child or to remedy the effects on a child of abuse, neglect, abandonment or similar circumstances.” In addition to reiterating its prior SIJ-related determinations, the Amended SIJ Order states “[t]he Court finds that it is in the [Petitioner]’s best interest to live in the custody of her caregiver and brother . . . “[t]he above findings are also entered to provide for her health, safety, and welfare, to establish residence for the purpose of healthcare and other services for which she is eligible in Massachusetts.” The Amended SIJ Order further states that the decree provides the Petitioner “a remedy against the wrongs to her from her parents’ neglect and abuse, their failure to protect her, and which make reunification with her parents a non-viable option.”

Upon review, the Petitioner has overcome our prior determination and established, by a preponderance of the evidence, that she 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. As such, the motion to reopen is granted, and the appeal is sustained. The motion to reconsider is moot.

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