



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

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

In Re: 18679380

Date: SEP. 14, 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. We dismissed the Petitioner's appeal. The matter is now before us on a combined motion to reopen and reconsider. On motion, the Petitioner asserts her eligibility for SIJ classification. Upon review, we will dismiss the motions.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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).

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), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary

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).

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). 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). 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 our prior decision, incorporated here by reference, we noted that a circuit court in [REDACTED] Florida (circuit court) entered an order (order) granting temporary custody of the Petitioner to aunt in 2017 when the Petitioner was 17 years old. In dismissing the Petitioner’s appeal, we determined that the Petitioner did not establish that her request for SIJ classification warranted USCIS’ consent, as the record was insufficient to establish the primary nature and purpose of the proceedings before the juvenile court in her case. Specifically, we concluded that the record lacked evidence regarding any past abuse, abandonment, neglect, or similar maltreatment by the Petitioner’s parents, and therefore did not establish that obtaining protection from further parental maltreatment was the Petitioner’s primary purpose for seeking the custody appointment. We also found that the record did not establish that the Petitioner’s reunification with one or both parents was “not viable due to abuse, neglect, abandonment, or a similar basis found under State law,” as required by section 101(a)(27)(J)(i) of the Act, as the record lacked a determination that reunification with one or both of her parents is not viable on account of such maltreatment.

On motion, the Petitioner submits a brief and argues that USCIS has erroneously applied the law in denying her SIJ petition and that she has established a sufficient factual basis for the court’s determinations, renewing many of the same claims she made on appeal. As an initial matter, the Petitioner’s motion does not state new facts that are supported by documentary evidence, as required by 8 C.F.R. § 103.5(a)(2), and therefore does not satisfy the requirements for a motion to reopen.

We now turn to whether the Petitioner has met the requirements for a motion to reconsider, such 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). First, the Petitioner claims that requiring additional documentation to establish a factual basis for the circuit court’s findings would be inappropriate, as section 101(a)(27)(J) of the Act states that the instant determinations are the purview of a state juvenile court rather than USCIS. While the Petitioner is correct that the determinations themselves are the purview of a juvenile court, as discussed in our previous decision, petitioners must establish that the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). Furthermore, to warrant USCIS’ consent under section 101(a)(27)(J)(iii) of the Act, juveniles must establish that their request for SIJ classification is bona fide, which means that the 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. 8 C.F.R. § 204.11(b)(5). As explained in our previous decision, USCIS does not reweigh the evidence to assess whether the Petitioner was subjected to parental maltreatment or to assess the Petitioner's best interest; rather, we review the evidence to assess whether the determinations were made primarily for the purpose of protecting the Petitioner from that maltreatment. Here, the Petitioner did not meet her burden that protection from parental maltreatment was a primary purpose of obtaining the family court order.

Next, the Petitioner argues that she has submitted sufficient evidence of the requirements for SIJ classification. Specifically, she contends that the court used the clear and convincing evidence standard in stating that it was in her "best interest to remain in the United States" where she could be "protected from further abuse, abandonment[,] and neglect" in the custody of her aunt. She further states that according to section 751.05(3)(b) of the Florida Statutes Annotated (Fla. Stat. Ann.), in order for a court to grant custody after determining that a parent is unfit, the court must find that the parent has abused, abandoned or neglected the child". However, the order in the Petitioner's case does not include a determination that a parent was unfit. Furthermore, our review of this statute indicates that the provisions quoted by the Petitioner on motion, as in effect at the time of the order, apply only when a parent objects to a petition for temporary custody. Fla. Stat. Ann. § 751.05(3)(b) (West 2017). As we observed in our previous decision, the order explained that the custody order was sought and granted based on the consent of the Petitioner's parents to the custodial placement. Consequently, the Petitioner has not shown that the court order contains the requisite factual bases for the determinations such that our previous decision was in error.

Finally, the Petitioner claims that had USCIS adjudicated the SIJ petition within 180 days as legally required, she would have been able to modify the order to comply with the factual basis requirement.² Although we acknowledge this claim, petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375.

The Petitioner has not established that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision. Accordingly, on motion, the Petitioner has not demonstrated her eligibility for SIJ classification.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

² The Petitioner also cites *Matter of D-Y-S-C-*, Adopted Decision 2019-02, 6-7 (AAO Oct. 11, 2019) related to this argument. This adopted decision was superseded by the SIJ final rule, effective April 7, 2022, amending regulations governing the requirements and procedures for petitioners who seek SIJ classification. See Special Immigrant Juvenile Petitions, 87 Fed. Reg. at 13066. USCIS updated guidance in the USCIS Policy Manual to incorporate these changes. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic. USCIS Policy Alert PA-2022-14, Special Immigrant Juvenile Classification and Adjustment of Status (Jun. 10, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf>.