



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

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

In Re: 17634604

Date: SEP. 15, 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, and we dismissed a subsequent appeal and a combined motion to reopen and reconsider. The matter is now before us on a second combined motion to reopen and reconsider. On motion, the Petitioner submits additional evidence and asserts her eligibility for SIJ classification. Upon review, we will grant the motion to reopen and sustain the appeal.

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),

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). 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, we found the Petitioner ineligible for SIJ classification because the probate and family court’s order did not contain a qualifying parental reunification determination. Specifically, we found the court order insufficient because the order does not establish the state law basis for the court’s determination that the Petitioner’s reunification with her father is not viable due to abandonment and neglect, or a similar basis under state law. We also withheld USCIS’ consent to the Petitioner’s SIJ classification. We dismissed a subsequent combined motion to reopen and motion to reconsider based on similar findings.

A. Parental Reunification Determination

As discussed in our previous decision, the Act requires a juvenile court determination that a juvenile’s reunification with one or both parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. In our decisions dismissing both the Petitioner’s appeal and combined motions, we determined that the court order in the Petitioner’s case did not establish the state law basis for the court’s determination that the Petitioner’s reunification with her father is not viable due to abandonment and neglect, or a similar basis under state law, and therefore lacked a qualifying parental reunification, as required.

On motion, the Petitioner submits a new *nunc pro tunc* court order, with the same date in 2017 as the original court order submitted below, which details the abandonment and neglect the Petitioner’s father subjected her to according to definitions of these terms in Massachusetts law, specifically section 3 of chapter 210 of the Massachusetts (Mass.) General Laws and section 2.00 of Chapter 110 of the Mass. Code of Regulations, respectively. The *nunc pro tunc* court order also declares the Petitioner dependent on the court, reiterates that reunification with the Petitioner’s father is not viable due to abandonment and neglect, and that it is not in the Petitioner’s best interest to return to her native Ecuador. The new order submitted on motion overcomes our prior determination and establishes by a preponderance of the evidence that the Petitioner meets the requirements in section 101(a)(27)(J)(i) for the court’s determinations regarding parental reunification.

B. USCIS Consent

In both of our prior decisions, we concluded that USCIS’ consent was not warranted because the preponderance of the evidence did not show that the Petitioner sought the probate and family court

order to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than primarily to obtain an immigration benefit.

The *nunc pro tunc* order refers the Petitioner to Probation Service for “to probation for resources for medical, occupational, counseling, and educational services”. The Petitioner also submits on motion new evidence regarding the occupational and medical services she received in 2017, the year the court order was issued, and thereafter. Therefore, the Petitioner has overcome our previous determination that she had not shown that the court provided her with referrals to support her health, safety, and welfare as relief from parental maltreatment.

III. CONCLUSION

The *nunc pro tunc* order overcomes our prior determination and establishes, by a preponderance of the evidence, that the Petitioner 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.

On motion, the Petitioner has met her burden to establish that she is eligible for and merits USCIS’ consent to his request for SIJ classification. 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.