



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

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

In Re: 19034459

Date: SEP. 22, 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 subsequently dismissed the Petitioner's appeal of that decision, which we incorporate here by reference. The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence to establish her eligibility for SIJ classification. Upon review, we will dismiss the motion.

I. LAW

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.

To establish eligibility for SIJ classification, a petitioner 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 of their 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 The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner in the custody of a state agency or an individual or entity appointed by the state or 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 petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when a petitioner meets all other

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).

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. 8 C.F.R. § 204.11(b)(5). USCIS may 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. *Id.* The petitioner bears 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 Factual and Procedural History

In 2017, when the Petitioner was 16 years old, a District Court in [REDACTED] Texas (juvenile court) issued an *Order of Declaratory Judgment and Findings* (declaratory judgment) in which it made findings relevant to the Petitioner's eligibility for SIJ classification. The court found that the Petitioner had been released from the custody of the U.S. Department of Health and Human Services Office of Refugee Resettlement (ORR) to her mother and declared her "dependent upon this juvenile court in accordance with the laws of the State of Texas while [she is] under jurisdiction of this Court." It also found that the Petitioner had been abused and neglected by her father, citing the relevant definitions under the Texas Family Code and summarizing the father's conduct that formed the basis of the court's determination. The court further determined that the Petitioner's reunification with her father was not viable due to his abuse and neglect. The order also declared that it was not in the Petitioner's best interest to return to Honduras, her country of nationality, due to the absence of any suitable caretakers and the prevalence of violence and crime. In May 2017, the Petitioner filed her SIJ petition based on this order.

The Director denied the SIJ petition, finding that the Petitioner was ineligible because the record lacked a qualifying declaration of dependency or custody placement. The Director determined that the orders did not cite any state law basis for the dependency declaration and did not place the Petitioner in the custody of an individual or entity in accordance with Texas law. The Petitioner appealed the Director's decision, reasserting her eligibility for SIJ classification. We subsequently issued a notice of intent to dismiss (NOID), explaining that, although the Petitioner had overcome the Director's reasons for denying the petition and shown that the court had made the requisite determinations for SIJ eligibility, she had not demonstrated that her request for SIJ classification merited USCIS' consent. In response to our NOID, the Petitioner asserted that her primary purpose in seeking the juvenile court order was to obtain relief from her father's abuse and neglect, that there is no prohibition against the corollary benefit of receiving SIJ classification subsequent to issuance of a dependency order, and that her potential SIJ eligibility is a secondary protective function consistent with and in furtherance of the court's best interest determination.

We dismissed the appeal, concluding that while there may be some immigration-related motive for seeking a juvenile court order, the Petitioner did not show that a primary reason in seeking the order was to obtain relief and she did not provide evidence demonstrating that the court granted a form of relief or remedy from parental maltreatment. She asserted that the court provided the protections warranted under the circumstances at the time the order was granted, but she did not demonstrate what those protections were. The court did not issue orders or referrals under any provisions of Texas law

to support the Petitioner's welfare or provide other protective or remedial relief from her father's abuse or neglect; the record did not indicate that the court took jurisdiction over the Petitioner in any other prior or related proceeding providing her with any relief or remedy from parental abuse, neglect, abandonment, or a similar basis under state law; and the Petitioner did not otherwise establish that she sought any form of relief other than SIJ-related findings.

B. USCIS' Consent Is Not Warranted

To warrant USCIS' consent, petitioners must establish 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). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* An example of court-recognized remedial relief includes the recognition of a petitioner's placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain 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). If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.* 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 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. 8 C.F.R. § 204.11(d)(5)(ii).

On motion, the Petitioner asserts that according to the USCIS Policy Manual, her court order dependency should be treated as the relief being sought from the juvenile court. She further contends that we failed to acknowledge that the juvenile court stated the purpose of the order was to protect the Petitioner from further abuse and neglect and that the court retained jurisdiction and reserved the right to make orders necessary to clarify the order. The Petitioner asserts that the fact that the court reserved the right to make changes highlights that the court signed a predicate order for court order dependency and reserved the right to make changes to address health, safety, welfare, or other needs if necessary in the future to protect her or prevent future abuse, abandonment, or neglect. She contends that because she was living with her mother, who was supporting the Petitioner while she attended school, at the time of the declaratory judgment, the court did not see the need to intervene further as the dependency order ensured the Petitioner's best interest was taken into consideration, she was safe from abuse and neglect, and the court reserved the right to make further arrangements if necessary. The Petitioner again refers to a previously published decision and USCIS policy memoranda issued in 2004 and 2009 to support her assertion that demonstrating the requisite judicial determinations and their reasonable

factual basis suffices to warrant USCIS' consent to SIJ classification.² She also submits on motion an attorney affidavit that summarizes the testimony that was submitted to the court.

Here, the Petitioner has still not shown that the court granted a form of relief or remedy from parental maltreatment. We acknowledge the juvenile court's declaration that she is "dependent upon this juvenile court in accordance with the laws of the State of Texas while [she is] under jurisdiction of this Court" and that the "purpose of this order is to protect [the Petitioner] from further abuse and neglect." However, a dependency declaration alone is not sufficient to warrant USCIS' consent to SIJ classification absent evidence that the dependency declaration was issued in juvenile court proceedings which actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. *See* 8 CFR 204.11(d)(5)(ii)(B); *see also* 6 *USCIS Policy Manual* J.2(D), <https://www.uscis.gov/policy-manual> (discussing the evidentiary requirements for USCIS consent). Though the Petitioner argues that the court reserved the right to make changes to address health, safety, welfare, or other needs if necessary in the future, the record does not reflect that the court issued orders or referrals under any provisions of Texas law to support the Petitioner's welfare or provide other protective or remedial relief from her father's abuse or neglect. The record does not otherwise establish that the Petitioner sought any form of relief other than SIJ-related findings.

While "USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order," a petitioner must establish "a primary reason" for seeking the requisite juvenile court determinations was to obtain 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). Here, the preponderance of the evidence does not establish that a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. Accordingly, USCIS' consent to a grant of SIJ classification is not warranted.

III. CONCLUSION

As the Petitioner has not established on motion that her request for SIJ classification merits USCIS' consent, she is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

ORDER: The motion to reconsider is dismissed.

² The Petitioner cites *Matter of D-Y-S-C-*, Adopted Decision 2019-02, 6-7 (AAO Oct. 11, 2019) related to this argument. This adopted decision and the referenced memoranda 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>.