



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

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

In Re: 19293667

DATE: SEP 23, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ Petition), and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen. On motion, the Petitioner submits additional evidence and asserts his eligibility 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 to be proved and be supported by affidavits or other evidence. 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), (c)(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 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. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In [REDACTED] 2018, when the Petitioner was 20 years old, the Massachusetts Probate and Family Court, [REDACTED] (Family Court) issued an order titled DECREE OF SPECIAL FINDINGS OF FACT AND RULINGS OF LAW (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was “dependent upon this Court.” The Family Court further found that the Petitioner’s reunification with his father was not viable due to neglect and abandonment and that it was not in his best interest to be removed from the United States and returned to Honduras, his country of nationality.

In February 2020, the Director denied the SIJ petition, determining that the Petitioner did not establish that he warranted USCIS’ consent. On appeal, the Petitioner submitted an amended order issued *nunc pro tunc* to 2018 (amended order), along with other supporting documents. While acknowledging that Massachusetts General Laws (M.G.L.), Public Welfare Title, Chapter 119, section 39M (2018), cited to in the amended order, was applicable retroactively to the Petitioner’s case and provides for certain protective relief, we dismissed the appeal because the Petitioner did not establish that the amended order provided him any actual relief, and he did not therefore warrant USCIS’ consent to his request for SIJ classification.

Now, in support of his motion, the Petitioner submits a brief, a 2021 updated amended order issued *nunc pro tunc* to August 2018 (second amended order) when the initial order was issued, copies of underlying Family Court documents, and previously submitted documents. The Petitioner argues that the second amended SIJ order demonstrates that the court provided relief from his father’s abandonment and neglect.

As stated, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria, section 101(a)(27)(J)(i)–(iii) of the Act, and the request for SIJ classification is bona fide. 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). For USCIS to consent, petitioners must establish the juvenile court order or supplemental evidence includes the factual bases for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5)(i).

In the instant matter, USCIS’ consent is warranted because the Petitioner has established by a preponderance of the evidence that a primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to

obtain an immigration benefit. Here, both the initial order and the second amended order submitted on appeal cite to M.G.L. ch. 119, section 39M for its jurisdiction, declares the Petitioner dependent on the court, and includes the juvenile court's determinations 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 Honduras. *See* 8 C.F.R. § 204.11(d) (evidentiary requirements for USCIS consent). The evidence submitted also provides a factual basis for the parental reunification and best interest determinations. *See id.* The second amended order now also refers the Petitioner to probation for "social and occupational services, to remedy and mitigate the parental underinvestment he was a victim of." The court further specifies that the second amended SIJ order and the Petitioner's dependency on the court were intended "to provide relief from the abandonment and neglect of [the Petitioner] by his father, to provide for his safety and well-being, to establish residence for the purposes of health care eligibility, and to protect [him] from further neglect and harm, in accordance with Massachusetts law."

Accordingly, the second amended order overcomes our prior determination and establishes, by a preponderance of the evidence, that a primary reason the Petitioner sought the juvenile court orders was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that he was granted such relief. Consequently, the Petitioner has demonstrated that he is eligible for and merits USCIS' consent to his request for SIJ classification.

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