



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

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

In Re: 29699751

DATE: DEC. 21, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). We dismissed the Petitioner's appeal and his three subsequent combined motions to reopen and reconsider. The Petitioner now submits a fourth combined motion to reopen and reconsider. Upon review, we will dismiss the motions.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must show that our prior 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). Petitioners bear the burden of proof to establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

In 2018, the Director denied the SIJ petition, concluding that the Petitioner did not demonstrate that the [REDACTED] which issued a 2016 Order of Dependency and Findings (SIJ order) and a 2017 Order of Dependency and Findings Nunc Pro Tunc (amended SIJ order) containing SIJ related findings, had made a qualifying declaration of dependency or custodial placement under applicable state child welfare law, as required. In our decision dismissing the appeal, we determined that although the two court orders included a dependency finding, neither the orders nor the underlying court documents established that the court made the requisite dependency determination under applicable state child welfare law governing such findings, as those orders specifically cited only to the Act for its dependency determination. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1)(i).¹ We later dismissed the Petitioner's subsequent motions to reconsider as they did not meet the requirements of a motion to reconsider where he did not show any error in our prior decisions. We also dismissed his concurrent motions to reopen. The first two motions to

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

reopen were dismissed because he did not establish new facts based on evidence that would warrant reopening of the matter. We specifically determined that his only new evidence submitted with the first two motions to reopen—the then pending District Court motion seeking an order clarifying the court’s earlier orders—did not establish a basis for reopening, as he did not submit evidence that the court in fact issued the requested clarifying order. In dismissing his second motion to reopen, we also noted that the District Court orders did not establish that the court had granted him protective or remedial relief from parental maltreatment, as required, and specifically notified him that he must also establish this requirement to show that his request for SIJ classification warrants U.S. Citizenship and Immigration Services’ (USCIS’) consent. We dismissed the Petitioner’s third motion to reopen in part because he did not timely submit the new evidence with the motion as required.²

With the instant motion to reopen and reconsider, the Petitioner submits a brief that is nearly identical to the ones that he submitted with his previous motions. He does not assert any error in our prior decision on his third motion and thus has not met the requirements of a motion to reconsider. Instead, the Petitioner again resubmits the District Court’s [REDACTED] 2022 clarifying order and other previously submitted evidence and reasserts that the court made a qualifying dependency declaration and custodial placement under applicable state law, and further avers that he is otherwise eligible for SIJ classification and warrants USCIS’ consent.

SIJ petitioners must be declared dependent upon a juvenile court, or be placed under the custody of a state agency or department or of an individual or entity appointed by a state or juvenile court. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1). The juvenile court’s dependency declaration must be made in accordance with state law governing such declarations. 8 C.F.R. § 204.11(c)(1)(i). Along with the other SIJ eligibility requirements, petitioners also must establish the applicable state law on which the juvenile court rendered its dependency declaration. *Id.* USCIS determines whether this requirement is met under federal law. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018). Here, the Petitioner submits on motion the District Court’s clarifying order, which cites applicable state child welfare laws in support of the court’s SIJ related determinations. This new order, in conjunction with the two prior orders and the underlying court documents, establishes that he was declared dependent on the court under state law as the Act requires. *See 6 USCIS Policy Manual* J.2, <https://www.uscis.gov/policy-manual> (providing guidance that USCIS generally defers to the court on matters of state law and does not go behind the relevant order to make independent determinations as to the requisite SIJ determinations).

However, even considering the court’s clarifying order as new evidence, the Petitioner has not met his burden of demonstrating that his request for SIJ classification warrants USCIS’ consent; and reopening therefore is not warranted. In addition to establishing all other SIJ eligibility requirements under the Act and related regulations, the Petitioner must show that his request for SIJ classification is bona fide and warrants USCIS’ consent, which requires him to demonstrate that a primary reason he sought the requisite juvenile court findings 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). To establish that USCIS’ consent is warranted, the juvenile court order or supplemental evidence must include the factual bases for the court’s parental reunification and best interest determinations.

² Although the District Court had issued its clarifying order in [REDACTED] 2022 when the Petitioner’s second motion to reopen was still pending before us, he did not submit the order to us until April 2023, a month after he filed his third motion to reopen with us.

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). 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. 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).

In our January 2023 decision dismissing the Petitioner's second motion to reopen and reconsider, we specifically notified the Petitioner that separate from the issue of whether the court made a qualifying dependency determination, the record also did not establish that his request for SIJ classification warranted USCIS' consent because the District Court orders and the underlying court documents in the record did not show that the court granted him protective or remedial relief from parental maltreatment. Although the Petitioner now submits a clarifying order which again confirms that the District Court found that the Petitioner was abandoned by his father and acknowledges the fact that he was in his mother's "physical custody" as he was living with her, neither the clarifying order nor the remaining documents in the record demonstrate that the Petitioner either sought any relief from the court for his father's maltreatment or that the court legally appointed his mother as his guardian, granted her custody of him, or otherwise granted him another form of protective or remedial relief from parental maltreatment. *See* 8 C.F.R. § 204.11(b)(5), (d)(5)(ii) (stating that to warrant USCIS' consent, petitioners must establish that a primary reason they sought SIJ related findings was to obtain relief from parental maltreatment, and further, the juvenile court order or supplemental evidence must demonstrate the relief from parental maltreatment that the court granted or recognized). The Petitioner therefore has not established that his request for SIJ classification warrants USCIS' consent, and consequently, he has not demonstrated that reopening is warranted.

The record on motion also includes a high school report card but the Petitioner does not explain how it establishes his SIJ eligibility. As the Petitioner has not established his eligibility, he has not demonstrated that his motion to reopen should be granted. He also has not satisfied the requirements for a motion to reconsider as he does not assert any error in law or policy and has not demonstrated that our prior decision dismissing his third combined motion was incorrect based on the evidence before us at the time. 8 C.F.R. § 103.5(a)(2), (3).³ Accordingly, the motion to reopen and reconsider is dismissed, and the SIJ petition will remain denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

³ The record reflects that the Petitioner is a native and citizen of Guatemala, rather than El Salvador as mistakenly noted in our decision dismissing his third combined motion—a harmless error that did not impact our analysis or the outcome in that decision. We also inadvertently misstated the grounds for denial of the SIJ petition in summarizing the Director's and our previous appeal and motion decisions in that same decision; however, this too was harmless error as our decision otherwise properly analyzed the correct basis of ineligibility.