



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

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

In Re: 25033945

Date: FEB. 10, 2023

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 Long Island, New York Field Office denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) because the Petitioner did not establish USCIS' consent was warranted. We subsequently dismissed an appeal of that decision. The matter is now before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner asserts that the record establishes his eligibility for SIJ classification, and he contends we erred in our contrary determination. Upon review, we will dismiss both 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 state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record 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. Additionally, a review of any motion is limited to the bases supporting the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Thus, we examine any new facts and arguments to the extent that they pertain to our dismissal of the Petitioner's prior appeal.

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 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

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).

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).

On motion, the Petitioner contends we should reopen and reconsider our prior decision to consider the new explanation for the discrepancies between his statements to immigration officials and his affidavit in SIJ proceedings. On appeal, we considered the Petitioner's argument that the statements he made to the Family Court and the immigration officials about his father's whereabouts were not inconsistent. The Petitioner presents additional documentary evidence – an affidavit – on motion. Therefore, we consider whether the Petitioner has demonstrated his eligibility for SIJ classification such that the motion should be granted.

Despite presenting new evidence, the Petitioner has not established that his request for SIJ classification is bona fide and warrants USCIS' consent. In our prior decision on the Petitioner's appeal, we concluded the Director correctly determined that consent was not warranted "because the Petitioner made statements to U.S. Customs and Border Patrol (CBP) that were inconsistent with his affidavit in his SIJ proceedings." On motion, the Petitioner provides an updated affidavit explaining the inconsistencies, as well as a copy of his prior affidavit on appeal. The affidavit does not overcome our prior determination and ground for dismissal. Rather, the statements contained in the affidavit further support our decision to affirm the Director's withholding of consent.

The Petitioner argues we must reconsider our prior decision in light of his new affidavit explaining the inconsistencies. The Petitioner asserts that he was exhausted when he gave his statement to CBP, mistakenly informing officers his father died in 2006. In his affidavit, he claims this was a "mathematical error." With regards to his affidavit to the Family Court in SIJ proceedings, the Petitioner states in his newest affidavit that he informed the Family Court only that his father had abandoned him, specifically telling the Family Court, "I do not know where my father is or if he is still alive." That statement is inconsistent with his statement to CBP, in which he claimed his father had been killed by the Petitioner's uncles in 2006. Further, in his most recent affidavit, he states that his attorney at the time told him to tell the Family Court simply that he did not know where his father was, and the Petitioner states he knew at the time this was not the truth. The Petitioner has not established on motion that his request for SIJ classification was bona fide, and he admits that he provided false information to the Family Court that was material to the finding that his father abandoned him. The record, including the Petitioner's affidavit submitted on motion to reopen, does not support a finding that a primary reason he sought SIJ classification was to obtain relief from parental abandonment.

On motion, the Petitioner further alleges the discrepancies with regard to his father's whereabouts were minor and "trivial," citing caselaw relating to credibility findings in removal proceedings. As outlined above, 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). The inconsistencies on the record concerning the whereabouts of the Petitioner's father are material to his eligibility for SIJ classification and the finding that reunification with his father was not viable due to abandonment. As such, the Petitioner has not established that a primary reason for seeking SIJ classification was to obtain relief

from parental abandonment or that our prior determination that his request was not bona fide was incorrect.

On motion, the Petitioner has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.