



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

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

In Re: 25233026

DATE: Jan. 20, 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 National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). We dismissed the Petitioner's appeal as well as his subsequent motion to reopen. The Petitioner now submits combined motions to reopen and reconsider. Upon review, we will grant the motion to reopen and sustain the appeal. The motion to reconsider therefore will be dismissed as moot.

I. LAW

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.

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).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. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

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).

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 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 establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In [REDACTED] 2017, when the Petitioner, a native and citizen of Guatemala, was 18 years old, the Massachusetts Probate and Family Court for [REDACTED] (Family Court), issued a “DECREE ON Amended COMPLAINT IN EQUITY WITH SPECIAL FINDINGS OF FACT AND RULINGS OF LAW” (SIJ order). Following a request for evidence, the Director denied the SIJ petition, concluding that he did not establish that the court exercised jurisdiction over him as a juvenile under state law at the time the court issued the SIJ order, and that the court order lacked a qualifying dependency declaration or placement of custody. The Petitioner’s appeal followed, and while the appeal was still pending, he submitted an [REDACTED] 2018 “DECREE OF SPECIAL FINDINGS OF FACT AND RULINGS OF LAW” (first amended order). In response to our notice of intent to dismiss the appeal, he submitted another “DECREE OF SPECIAL FINDINGS OF FACT AND RULINGS OF LAW” (second amended order), issued in [REDACTED] 2020. Although we withdrew the grounds on which the Director denied the SIJ petition, we nonetheless dismissed the Petitioner’s appeal because he did not establish that he sought and obtained relief from parental maltreatment under state law from the Family Court such that his request for SIJ classification warranted USCIS’ consent. The Petitioner then filed his previous motion to reopen, which we dismissed as untimely.

The Petitioner continues to seek reopening of the matter, and he reasserts his eligibility for SIJ classification and maintains that his request for SIJ classification warrants USCIS’ consent.

Upon review of the Petitioner’s explanations and new supporting evidence he provided with the instant motion to reopen, he has now demonstrated that the delay in filing the previous motion to reopen was reasonable and beyond his control, such that reopening is warranted. *See* 8 C.F.R. § 103.5(a)(1)(i). We therefore now address the Petitioner’s substantive arguments and new evidence provided with his previous and current motions regarding his eligibility for SIJ classification.

As stated, SIJ classification may only be granted upon USCIS’ consent, when a petitioner meets all other eligibility criteria and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). To show 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). To establish that USCIS’ consent is warranted, the juvenile court order or supplemental evidence must 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). 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.* 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. 8 C.F.R. § 204.11(b)(5).

On motion, the Petitioner asserts that he requested and was granted relief in the form of the court's referral of the Petitioner to various services to remedy the parental maltreatment. In support of these assertions on motion, he submits a *nunc pro tunc* "DECREE OF SPECIAL FINDINGS OF FACT AND RULINGS OF LAW" (third amended order) issued by the Family Court in 2021.²

The court-ordered referral of the Petitioner to the various services in this case constitutes a form of protective relief from parental maltreatment. The Family Court here determined under state legal authority that the Petitioner's both parents abused, abandoned, or neglected him. The court's third amended order specifically referred the Petitioner to the county probation department "for social and occupational services, to remedy and mitigate the parental abuse and underinvestment that he was a victim of." The underlying motion seeking this amended order also consistently indicates that he specifically asked the court to update its previous orders "to make it clear that the Court's intent was to provide relief." *See* 8 C.F.R. § 204.11(d)(5)(ii) (stating that in determining whether USCIS' consent is warranted, the juvenile court order or supplemental evidence must show the relief from parental maltreatment that the court granted or recognized). The record therefore sufficiently shows that the Petitioner sought and obtained protective or remedial relief from his parents' abuse, abandonment, and neglect, as evidenced by the court's referral to the various services. Accordingly, the Petitioner has overcome our previous determination that he did not establish that he sought and obtained protective or remedial relief from parental maltreatment.

The record further shows that the Family Court made the requisite SIJ related determinations regarding juvenile dependency and/or custody, parental reunification, and best interest and establishes a factual basis for the court's determinations. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5), (d)(5)(i). The Petitioner therefore has established, by a preponderance of the evidence, that a primary reason he sought the court orders was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that he was granted such relief under applicable state law, as evidenced by the court-ordered probationary referral.³ As the record otherwise shows that he meets the remaining eligibility criteria and his request for SIJ classification warrants USCIS' consent, the Petitioner has established his eligibility for SIJ petition under the Act.

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

² Although the Petitioner submitted this third amended order to us during the pendency of his prior motion to reopen, as stated, we dismissed that motion as untimely without reaching the substantive arguments and evidence on that motion.

³ Given our determination that the court's referral to the various services constitutes protective or remedial relief from parental maltreatment, we need not revisit whether the court's placement of the Petitioner "under the care and supervision of his cousin" also constitutes a form of relief. Further, given our resolution of the Petitioner's instant motion to reopen, we do not reach the merits of his motion to reconsider. *See, e.g., INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that courts and agencies are not required to address issues that are unnecessary to the results they reach).