



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

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

In Re: 26686918

Date: JUN. 08, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner, a native and citizen of Guatemala, 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), concluding, among other things, the record did not establish that USCIS' consent was warranted because it did not establish the SIJ petition was bona fide. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). We dismissed a subsequent appeal of that issue. The matter is now before us on a motion to reconsider. On motion, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification and warrants USCIS' consent. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish 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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on section 39M of the Massachusetts General Laws. *See* M.G.L. ch. 119, § 39M (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113.

Upon review of the record, we find that the Petitioner has not identified an incorrect application of law or policy that rendered our prior decision incorrect at the time it was issued. In our previous decision, we noted the court order underlying the SIJ petition reflects that the Family Court made findings of abandonment by the Petitioner's father and determined that reunification with him was not viable on that basis, but the record did not establish that the Family Court provided any protective or remedial relief to the Petitioner for such parental maltreatment pursuant to the Massachusetts child protection provisions or any other Massachusetts law, as required to establish that USCIS' consent is warranted. *See* 8 C.F.R. § 204.11(d)(5)(ii). Although the Family Court made the necessary findings as to parental reunification and found it would not be in the Petitioner's best interest to be returned to

Guatemala, the Family Court did not order any relief from the abuse or neglect. We recognize that section 39M of the Massachusetts General Laws, which establishes the Family Court’s jurisdiction over the Petitioner to make special findings related to requests for SIJ classification, is cited in the SIJ order. *See* M.G.L. ch. 119, § 39M (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113. Section 39M provides for certain relief in the form of “orders necessary to protect the child against further abuse or other harm,” including complaints for abuse prevention or support, as well as court-provided referrals for “psychiatric, psychological, educational, occupational, medical, dental or social services or [. . .] protection against trafficking or domestic violence.” *Id.* However, the Family Court’s citation to section 39M does not establish that a juvenile was provided relief from parental maltreatment. *See* 8 C.F.R. § 204.11(d)(5)(ii).

We did not previously err in concluding the inclusion in the court order that the Petitioner was dependent on his mother for care while he attends high school was insufficient to constitute relief from parental maltreatment. Here, the court order indicated that its findings were in accordance with section 39M, but it did not include any specific orders or referrals to support the Petitioner’s health, safety, and welfare under the section 39M provisions as relief from parental maltreatment. *See* M.G.L., ch. 119, § 39M; *see* 8 C.F.R. § 204.11(d)(5)(ii) (identifying qualifying relief as 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). The Family Court did not place the Petitioner in his mother’s custody nor provide any protective or remedial relief. Without such court-ordered relief, the Petitioner has not demonstrated 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. As such, the Petitioner has not established USCIS’ consent is warranted such that our prior decision was erroneous under the law and policy at the time it was issued.

ORDER: The motion to reconsider is dismissed.