



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

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

In Re: 26244372

Date: MAY 23, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). We dismissed a subsequent appeal, and later a combined motion to reopen and reconsider determining that U.S. Citizenship and Immigration Services' (USCIS') consent was not warranted. The Petitioner now files a motion to reopen our decision. On motion, the Petitioner submits a brief and copies of caselaw. The Petitioner asserts that these new facts establish eligibility as a SIJ. Upon review, we will dismiss the motion to reopen.

**I. LAW**

A motion to reopen "must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. The petitioner bears 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).

**II. ANALYSIS**

In our decision dismissing the Petitioner's appeal,<sup>1</sup> incorporated here by reference, we determined that, when the Petitioner was 16 years old, the District Court for the 37th Judicial District in [ ] County, Texas issued an "Order of Declaratory Judgment and Findings." The District Court made the following relevant findings in the order after a hearing and reviewing the evidence: that it had subject matter and personal jurisdiction, and the Petitioner was released from custody of the Department of Health and Human Services Office of Refugee Resettlement to a family friend. The District Court discussed the Petitioner's circumstances in Honduras and determined that he was constructively abandoned by his mother pursuant to Texas law when she died and did not provide for his care and supervision. The District Court also determined that the Petitioner's father neglected and abandoned

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<sup>1</sup> See *In: Re 20283780* (AAO Sep. 30, 2022)

him pursuant to Texas law when he ceased to live with him in Honduras and failed to provide economic and emotional support. However, in our decision, we advised that SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through USCIS, when a petitioner meets all other eligibility criteria and establishes that the juvenile court or administrative determinations were sought primarily to gain relief from parental maltreatment. We determined that the District Court's order did not discuss relief, but rather reserved the right to make clarifying orders. While we acknowledged that the District Court reserved the right to make changes "to address health, safety, welfare or other needs if the need arose in the future," the order did not contain language referring to the Petitioner's "health, safety, welfare or other needs" and no subsequent clarifying orders were issued by the District Court providing relief under Texas law. Furthermore, although the District Court noted that the Petitioner was being cared for by a family friend, the District Court order did not provide relief from parental abuse, neglect, abandonment, or a similar basis under state law. While the District Court order states that "the purpose of this order is to protect the [Petitioner] from further neglect and abandonment," the District Court did not order any form of relief, nor did it explain how the order would protect the Petitioner from abuse or neglect. We therefore concluded that the record did not establish, by a preponderance of the evidence, that a primary purpose for which the Petitioner sought the District Court's order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis to these grounds. Accordingly, we determined that the Petitioner had not demonstrated that his request for SIJ classification merited USCIS' consent, and we dismissed the combined motions in September 2022.

On his motion to reopen, the Petitioner asserts that both the Director and the AAO relied on outdated regulations and sub-regulatory policies when his SIJ petition was denied in June 2019 and remained denied in August 2021. He argues that the Director interpreted the "consent" function as a test to whether a petition is *bona fide* even though the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (2008) removed the word "expressly" from the 1998 amendment of § 1101(a)(2)(J) which added the requirement that the Attorney General expressly consent to the dependency order as a precondition to the grant of SIJ status, and also changed the object of the consent from "the dependency order" to the grant of SIJ status itself. The Petitioner further argues that the 2019 and 2021 denials were unlawful and should be withdrawn because they were not in accordance with the law. We disagree with the Petitioner's contention because while TVPRA 2008 shifted DHS's consent function to the grant of the SIJ classification and removed the requirement that DHS "expressly" consent to the dependency order, Congress did not remove the consent function. DHS cannot treat the consent function as absent because Congress did not remove it, and neither can DHS render it meaningless by applying a presumption that every petition that includes a juvenile court order merits consent. Moreover, we note that in a motion to reopen, our review is limited to our last decision which was issued in September 2022. In that decision, we applied the final rules related to SIJ which were issued in April 2022 and determined that based on the facts and circumstances, consent was not warranted.

The Petitioner contends that both the Director and the AAO imposed additional requirements by requiring him to establish the "primary purpose burden" which is not included in the SIJ statute. But, this argument is unavailing because DHS recognized that some SIJ petitioners may have a dual or mixed motivations and consequently modified the consent function by removing the requirement that the petitioner demonstrate that they did not seek the juvenile court's determinations "primarily for the purpose of obtaining lawful immigration status" and instead required 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.” See 8 C.F.R. § 204.11(b)(5) (emphasis added).

The Petitioner argues that because he filed his SIJ petition in 2017, it was unlawful to retroactively apply the updated regulations to his petition. However, this argument is unavailing because the changes which became effective in April 2022 merely revised the DHS regulations at 8 C.F.R. §§ 204.11, 205.1, and 245.1 to reflect statutory changes, modify certain provisions, codify existing policies, and clarify eligibility requirements. As stated in the final rule, “. . . DHS is incorporating these statutorily mandated changes and codifying its long-standing policies and practices already in place.” See *Special Immigrant Juvenile Petitions*, 87 Fed. Reg. 13066 (Mar. 8, 2022) (*revising* 8 C.F.R. §§ 204, 205, 245).

The Petitioner argues that the District Court concluded that he met all the statutory requirements for SIJ. However, we note that whether a petitioner meets all the statutory requirements for SIJ, is a question of federal law and lies within the sole jurisdiction of DHS. See *Arizona v. United States*, 567 U.S. 387, 394 (2012) (“The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”). 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). Therefore, the District Court lacked the authority to determine the Petitioner’s eligibility for SIJ benefits.

The Petitioner again argues that the District Court’s dependency declaration was sufficient relief from parental abuse, neglect or abandonment, and that to require more than the declaration such as a custody order or child support goes beyond what is required by statute or regulation. He asserts that a court ordered dependency can, in and of itself, be the qualifying relief sought from the juvenile court. However, to establish the dependency declaration is *bona fide*, and thereby warranting USCIS’ consent, the dependency declaration should also provide for child welfare services, and/or other recognized protective or remedial relief. 8 C.F.R. § 204.11(d)(5)(ii)(B); see also 6 USCIS Policy Manual, *supra*, at J.2(C)(1) (explaining, as guidance, that a juvenile court’s determination of dependency generally means the child is subject to the court’s jurisdiction because allegations of parental maltreatment were sustained by the evidence and were legally sufficient to support state intervention on behalf of the child); *id.* at J.2(D) (explaining, as guidance, that the relief provided or recognized by the juvenile court may include dependency on the court for the provision of child welfare services, and/or other court-ordered or recognized protective or remedial relief). The District Court acknowledged that the Petitioner was abandoned by his parents in Honduras and that he was under the care of a family friend in the United States, but made no further determinations or provisions for intervention, protective or remedial relief, from the state of Texas. And such determinations or provisions are required for SIJ eligibility.

USCIS recognizes that petitioners may have an immigration motive for seeking a juvenile court order. See 6 USCIS Policy Manual, *supra*, at J.2(D) (explaining, as guidance, that while there may be some immigration motivation for seeking a juvenile court order, it did not necessarily reflect that the request for SIJ classification was not *bona fide*). However, as discussed, in determining whether consent is warranted, petitioners must 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. 8 C.F.R. § 204.11(b)(5). Our review here shows the District Court’s order did not grant relief from parental maltreatment, and thus consent is not established.<sup>2</sup>

To warrant USCIS’ consent, juveniles must establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought “primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect”). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS’ consent is warranted. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ findings).

We have reviewed the Petitioner’s arguments on his second motion and conclude they are unsupported by the record. An order of dependency absent any evidence that actual relief from parental maltreatment was granted, is generally not sufficient to warrant USCIS’ consent. Here, the evidence shows that the District Court made findings that his father neglected and abandoned him, his mother is deceased and did not make any provisions for his care prior to her death, and that he currently lives with a family friend. However, upon review, the record below did not include evidence demonstrating the actual relief granted by the District Court from this parental maltreatment. For example, the record lacked evidence, such as a custodial order, or an order of child support, or other evidence, demonstrating that the District Court granted relief from parental abuse, neglect, abandonment, or a similar basis to these grounds under Texas law. Further, none of the provisions in the declaratory judgement relate to any juvenile dependency, child custody, or other protective proceeding over the Petitioner under Texas law. Absent this evidence, the record does not reflect, by a preponderance of the evidence, that the District Court order actually provided the Petitioner relief from abuse, neglect, abandonment, or a similar basis under state law such that USCIS’ consent is warranted.

The scope of a motion is limited to “the prior decision” and “the latest decision in the proceeding.” 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied because the Petitioner has not established his eligibility for SIJ.

**ORDER:** The motion to reopen is dismissed.

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<sup>2</sup> In our prior decision, we relied upon *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019). This decision has been superseded by the SIJ Final Rule. *See* USCIS Policy Alert PA-2022-14, *SUBJECT: Special Immigrant Status and Adjustment of Status 2* (June 10, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf>. Although this decision has been superseded, current USCIS policy similarly provides that DHS generally consents to the grant of SIJ classification “[w]here the factual basis for the court’s determinations demonstrates that the juvenile court order was sought to protect the child and the record shows the juvenile court actually provided relief from abuse, neglect, abandonment, or a similar basis under state law.” 6 *USCIS Policy Manual* J.3(A)(2), [www.uscis.gov/policymanual](https://www.uscis.gov/policymanual).