



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

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

In Re: 18480156

DATE: AUG. 18, 2022

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), and we dismissed the Petitioner's subsequent appeal. The matter is now before us on motion to reopen and reconsider. 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). Upon review, we will grant the motion to reopen and sustain the appeal. The motion to reconsider is moot.

I. LAW

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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) of the Act; 8 C.F.R. § 204.11(b). 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. 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. *Id.* at section 101(a)(27)(J)(ii).

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 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 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).

II. ANALYSIS

In our prior decision, incorporated here by reference, we determined the Petitioner, a native and citizen of El Salvador, had not met his burden of establishing that the [REDACTED] Family Court in New York (Family Court) made a qualifying determination that parental reunification is not viable, as section 101(a)(27)(J)(i) of the Act requires, when it issued an order titled, *ORDER-Special Immigrant Juvenile Status* (SIJ order). Specifically, we concluded the SIJ order did not cite or reference any New York child welfare law under which it made its determination that reunification with the Petitioner’s father was not viable due to “a similar basis under state law,” and the Petitioner did not provide us with any underlying documentation that was submitted and considered by the Family Court. In his appeal, the Petitioner argued that the SIJ order demonstrated that the Petitioner was abandoned as prescribed by New York Social Services Law section 384(b), however, while the SIJ order cited to state law and indicated that parental reunification is not viable due to “a similar basis under state law,” the order did not indicate whether the state law is similar to abuse, abandonment, or neglect. We acknowledged the order cited to section 384(b) but could not determine the subsection on which the court relied. Therefore, we held that there was no qualifying parental reunification determination, as section 101(a)(27)(J)(i) of the Act requires. We further held that USCIS’ consent was not warranted because there was an insufficient factual basis for the parental reunification and best interest determinations, and we could not therefore determine whether the Petitioner sought the SIJ order to obtain relief from parental maltreatment, or to obtain an immigration benefit.

On motion, the Petitioner submits an amended SIJ order, the documents underlying the Family Court proceedings, and a brief. The Petitioner continues to argue that the parental reunification determination was made under New York law, there was a reasonable factual basis for the parental reunification and best interest findings, she warrants USCIS’ consent, and argues that we erroneously relied on an Administrative Appeals Office adopted decision.¹

A. Parental Reunification Determination

Among other eligibility requirements, the Act requires a determination that a petitioner’s reunification with one or both parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made

¹ The Petitioner argues that our adopted decision, *Matter of D-Y-S-C*, Adopted Decision 2019-02 (AAO 2019), was published after the SIJ petition’s filing date and the decision should not therefore be retroactively applied to the Petitioner’s case. However, our adopted decision did not create a new rule or standard that imposed a new legal consequence for all SIJ cases nor are our adopted decisions new statutes, legislation, or even policy; the adopted decision is a decision that is approved by the agency to provide clarity for USCIS personnel as well as the public in the way in which we adjudicate SIJ cases. The Petitioner’s argument is moot because our adopted decision did not produce a new rule or standard that can be retroactively applied; instead, it only serve to clarify how SIJ cases are adjudicated.

under state law, the record must contain evidence of a judicial determination that the Petitioner was subjected to such maltreatment by one or both parents under state law. 8 C.F.R. § 204.11(c)(1)(ii). The Petitioner bears the burden of proof to establish the state law the juvenile court applied in making this determination. *See Matter of Chawathe*, 25 I&N Dec. 369 at 375.

Here, the newly submitted amended SIJ order states that the Petitioner's father abandoned her. The amended SIJ order also cites section 384(b), which discusses abandonment as prescribed in New York law. Further, the memorandum of law submitted to the Family Court states that the Petitioner's father abandoned her when her mother was pregnant with her. Considering the newly submitted documents, the Petitioner has established, by a preponderance of the evidence, that the amended SIJ order contained a qualifying parental reunification determination. *See* 8 C.F.R. § 204.11(c)(1)(ii). As such, our determination to the contrary is withdrawn.

B. Best Interest Determination

A juvenile court must make a determination that it would not be in the petitioner's best interest to be returned to the petitioner's or their parent's country of nationality or last habitual residence. 8 C.F.R. § 204.11(c)(2). Additionally, a juvenile court must make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations, and the record should reflect the factual basis for the juvenile court's determination. *See* 6 *USCIS Policy Manual* J.2(C)(3), <https://www.uscis.gov/policymanual> (stating that "child's safety and well-being are typically the paramount concern" in determining whether juvenile court made qualifying best interest finding).

Here, the amended SIJ order states that "after examining the motion papers, supporting affidavits, pleadings and prior proceedings, and/or hearing testimony," it was not in the Petitioner's best interest to return to El Salvador. The newly submitted, memorandum of law and the Petitioner's affidavit underlying the Family Court proceedings described El Salvador as having become too dangerous for her to live and that she was thriving in the United States while living with her mother, who was given legal guardianship of the Petitioner. Considering the newly submitted documents, the Petitioner has established, by a preponderance of the evidence, that the amended SIJ order contained a reasonable factual basis for the best interest determination. *See* 8 C.F.R. § 204.11(c)(2), (d)(5)(i). As such, our determination to the contrary is withdrawn.

C. USCIS' Consent is Warranted

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). USCIS' consent is warranted because the Petitioner has established that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under New York law.

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). Furthermore, USCIS may 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 prior decision we held that USCIS’ consent was not warranted because there was no reasonable factual basis for the parental reunification and best interest determinations. As described above, the newly submitted documentation provides the reasonable factual basis for the determinations. Further, we note that the Petitioner was ordered relief from the maltreatment of her father, since the Family Court granted legal guardianship of the Petitioner to her mother. *See* 8 C.F.R. § 204.11(d)(5)(ii)(A); 6 *USCIS Policy Manual* J.2(D), <https://www.uscis.gov/policymanual>. Therefore, the Petitioner has established by a preponderance of the evidence that a primary reason the SIJ orders 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).

III. CONCLUSION

On motion, the Petitioner has submitted sufficient evidence to meet her burden to establish that she is eligible for, and merits USCIS’ consent to a grant of, SIJ classification.

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