



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

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

In Re: 18442510

Date: AUG. 25, 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 his subsequent appeal. The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

To establish eligibility for SIJ classification, petitioners must establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their 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 Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 petitioner's best interest to return to their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

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

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).

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). 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). 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

A. Relevant Facts and Procedural History

The Petitioner, a native and citizen of Guatemala, last entered the United States in January 1999 without inspection, admission, or parole. In [REDACTED] 2016, when the Petitioner was 17 years old, the District Court for the [REDACTED] Judicial District in [REDACTED] Texas (District Court) issued an *ORDER OF DEPENDENCY AND FINDINGS* (declaratory judgment). In the declaratory judgment, the District Court found that the Petitioner is “dependent on this Court within the meaning of INA Section 101(a)(27)(J)(i), 8 U.S.C. § 1101(a)(27)(J)(i)[,] 8 C.F.R. § 204.11(a),(d)(2)(i).” The District Court also determined that the Petitioner’s father abandoned and neglected him, and that his reunification with his father therefore was not viable. The District Court set forth specific facts underlying that determination. Furthermore, the District Court declared that it would not be in the Petitioner’s best interest to return to Guatemala, his country of nationality, within the meaning of section 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11(a), (d)(2)(iii). Based on the District Court’s declaratory judgment, the Petitioner filed his SIJ petition in December 2016.

In response to a request for evidence from the Director, the Petitioner submitted an *ORDER OF DEPENDENCY AND FINDINGS NUNC PRO TUNC* (*nunc pro tunc* declaratory judgment), in which the District Court specified that the Petitioner’s reunification with his father is not viable due to abandonment and neglect under sections 152.102(1) and 261.001(4) of the Texas Family Code (Tex. Fam. Code) and that it would not be in his best interest to return to Guatemala based on those same provisions. The District Court further indicated that the Petitioner was abandoned and neglected as defined in those provisions “such as to support the findings of dependency on this State court”

The Director denied the SIJ petition, concluding that the Petitioner had not met his burden of establishing that the District Court made a qualifying declaration of dependency or custodial placement, as required by section 101(a)(27)(J)(i) of the Act. Specifically, the Director concluded that the record did not establish that the District Court “declared [the Petitioner] dependent or made any determination regarding [his] custody under any provision of Texas law governing juvenile dependency or child custody.” The Director further explained that the provisions of Texas law cited in the *nunc pro tunc* declaratory judgment relate to the definitions of abandonment and neglect and do not reference dependency.

In our prior decision, incorporated here by reference, we determined that there was no error in the Director’s decision and its determination that the *nunc pro tunc* declaratory judgment did not cite

Texas state law in its discussion of the dependency declaration. As the District Court concluded that the Petitioner was dependent on the court “within the meaning of section 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11(a), (d)(2)(iii),” and the District Court did not reference Texas law in its dependency determination or indicate that the Petitioner was dependent on the court under state child welfare law, we determined that the *nunc pro tunc* declaratory judgment did not establish that the District Court relied on Texas child welfare law as the legal basis for its dependency declaration.²

B. Motion to Reopen and Motion to Reconsider

With the instant combined motion to reopen and reconsider, filed in May 2021, the Petitioner submits a brief and an unsigned copy of an *Order on Motion for Clarification* (motion for clarification) which he filed with the District Court in [REDACTED] Texas. In the Petitioner’s brief, he discusses the motion for clarification, and states that he will submit the signed copy of the order within 90 days of filing; however, at the time of this decision, no further documentation has been received from the Petitioner, and therefore, we cannot consider the motion for clarification, or the statements contained therein. The Petitioner’s brief submitted on motion is composed of arguments which rely on the execution of the motion for clarification. As noted, the executed *Order on Motion for Clarification* has not been received, and as such, the Petitioner has not established a basis for reopening our prior decision, as he has not provided new facts, supported by documentary evidence. Further, the Petitioner has not established an incorrect application of law or policy in our prior decision, supported by pertinent precedent decisions, or established that the decision was incorrect based on the evidence of record at the time of the initial decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

² The citation to the Code of Federal Regulations (C.F.R.) present in the order, while in effect at the time the order was issued, is no longer accurate.