



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

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

In Re: 13867240

Date: FEB. 19, 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 petition and we dismissed the subsequent appeal. The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner submits additional evidence and asserts her eligibility for SIJ classification. Upon review, we will dismiss the motions to reopen and reconsider.

**I. LAW**

A motion to reopen must state new facts and be supported by 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(c). 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).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019), at 5-6. 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

### A. Procedural History

The Director denied the SIJ petition, concluding the record did not contain a qualifying parental reunification determination for the Petitioner or a reasonable factual basis for the best interest determination. We dismissed the Petitioner's subsequent appeal, determining the Petitioner is a member of the *R.F.M. v. Nielsen class*, 365 F. Supp. 3d at 377-80 (S.D.N.Y. 2019), but we also concluded the record did not contain a qualifying dependency declaration or custody placement for the Petitioner, and that USCIS' consent to SIJ classification was not warranted. On motion, the Petitioner submits an *ORDER APPOINTING Guardian of the Person* (guardianship order) issued by the Family Court in [ ] 2020.

### B. Relevant Facts

In [ ] 2016, when the Petitioner was 19 years old, the New York Family Court, [ ] (Family Court) issued an order entitled *ORDER-Special Immigrant Juvenile Status* (SIJ order) in which it declared the Petitioner "is dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court." The Family Court determined the Petitioner's reunification with her parents was not viable due to neglect and abandonment under New York law as they "neglected and abandoned her at age 16," when they "cancelled her schooling and stopped providing her with food, clothing and any other support." The Family Court further determined that it is not in the Petitioner's best interest to return to Guatemala.

Based on the Family Court's SIJ order, the Petitioner filed her SIJ petition in February 2017. On appeal, the Petitioner submits a guardianship order issued by the Family Court in [ ] 2020 when the Petitioner was 23 years old. The guardianship order appoints guardianship of the Petitioner to L-Y-A-S-<sup>1</sup> such "appointment to last until the [Petitioner's] 21<sup>st</sup> birthday . . ."

### C. No Qualifying Juvenile Dependency Declaration or Child Custody Placement

We previously found the Petitioner did not demonstrate the Family Court made a qualifying juvenile dependency declaration or child custody placement for her. We noted the SIJ order mirrored the language of section 101(a)(27)(J)(i) of the Act, which requires either a dependency declaration or custodial placement by a juvenile court. But we determined the SIJ order did not clarify whether the Family Court made a dependency declaration or custodial placement and did not cite to any relevant New York state law under which such a declaration or placement would be made. We acknowledged the record included a petition by the Petitioner's sister seeking her appointment as a guardian of the Petitioner under section 661(a) of the New York Family Court Act, and that guardianships issued under this provision are judicial determinations about the custody and care of juveniles under *R.F.M.*

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<sup>1</sup> Initials are used to protect the privacy of this individual.

*v. Nielsen*, 365 F. Supp. 3d 350. However, we concluded the record did not reflect that the guardianship petition had been granted by the Family Court.

On appeal, the Petitioner submits a guardianship order from the Family Court appointing guardianship of the Petitioner to L-Y-A-S-. Though the guardianship order indicates it relates to a term held in [ ] 2016, the order was issued and signed by a Family Court judge in [ ] 2020. All petitioners for immigration benefits must establish their eligibility at the time of petition filing. 8 C.F.R. § 103.2(b)(1). And as the Petitioner's guardian was appointed for her on [ ] 2020, subsequent to the filing of her SIJ petition in February 2017, she has not established a qualifying juvenile dependency declaration or child custody placement had been made for her at the time of SIJ petition filing.

#### D. USCIS' Consent

We previously determined USCIS' consent to the Petitioner's request for SIJ classification is not warranted because the record lacked a qualifying juvenile dependency declaration or child custody placement, and the record did not establish the Family Court actually granted the Petitioner relief from parental abandonment and neglect by appointing her a guardian under section 661(a) of the Family Court Act. We noted a court's dependency declaration alone is insufficient to warrant USCIS' consent to SIJ classification absent evidence that it was issued in proceedings that actually granted relief from parental maltreatment. Accordingly, we determined the preponderance of the evidence did not demonstrate the Petitioner sought the SIJ order primarily to obtain relief from parental abuse, neglect, or abandonment, or a similar basis under state law rather than to obtain an immigration benefit. We also noted the absence of evidence that the Family Court took jurisdiction over the Petitioner in any prior or related proceedings providing her any type of relief or remedy from parental abuse, abandonment, or a similar basis under state law. On motion, the Petitioner does not address whether she merits USCIS' consent to SIJ classification. However, the guardianship order submitted by the Petitioner on motion contains a guardianship appointment that lasted only until the Petitioner's 21st birthday and was issued when the Petitioner was 23 years old. Accordingly, we do not find the Petitioner's newly submitted evidence constitutes a grant of relief from parental abandonment and neglect. On motion, the Petitioner has not overcome our prior determination that she has not established she merits USCIS' consent to SIJ classification.

### III. CONCLUSION

The Petitioner has not overcome the basis of our prior decision on instant motion and has not demonstrated a juvenile dependency declaration or custody placement was made for her, or that she warrants USCIS' consent to SIJ classification.

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

**FURTHER ORDER:** The motion to reconsider is dismissed.