



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

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

In Re: 10802298

Date: FEB. 22, 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 New York District Director (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 a combined motion to reopen and motion to 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 dismiss the motions.

## 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.

## II. ANALYSIS

### A. Relevant Facts and Procedural History

In 2016, when the Petitioner was 20 years of age, the New York Family Court for [REDACTED] (Family Court) appointed guardianship of the Petitioner to U-S-,<sup>1</sup> finding that such "appointment shall last until [the Petitioner]'s 21st birthday . . . ." Three days later, the Family Court issued an *ORDER-SPECIAL JUVENILE STATUS* (SIJ order), determining that the Petitioner was "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 Court further found that the Petitioner's reunification with his father was not viable due to abandonment and that it was not in the Petitioner's best interest to be removed from the United States and returned to India, his country of nationality.

---

<sup>1</sup> We use initials to protect privacy.

In September 2016, based upon the Family Court's orders, the Petitioner filed his SIJ petition. The Director denied the petition, concluding that the record did not establish that the Family Court had jurisdiction over the Petitioner's custody as a juvenile to be considered a juvenile court for SIJ classification. The Director also concluded that the Family Court's orders lacked qualifying determinations regarding the Petitioner's best interest and the viability of his reunification with his father. Further, the Director concluded that USCIS' consent to the Petitioner's request for SIJ classification was not warranted.

In our decision on appeal, we determined that the Petitioner had overcome the Director's conclusions that the Family Court was not acting as a juvenile court and had not made a qualifying determination that it was not in his best interest to return to India. However, we indicated that the Petitioner remained ineligible because he had not established that the Family Court made a qualifying parental reunification determination under state law and that USCIS' consent to his SIJ classification was warranted.

#### B. Parental Reunification Determination

A juvenile seeking SIJ classification must establish that his or her 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. As the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law. *See id.*; *Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 5-6 (AAO Oct. 11, 2019).

On appeal, we noted that although the Family Court found that the Petitioner's reunification with his father was not viable due to abandonment, the court did not cite or otherwise reference in its order any New York law on abandonment. Additionally, no other evidence in the record referenced any New York law on abandonment under which the court determined that the Petitioner could not reunify with his father due to abandonment. On motion, the Petitioner submits an amended SIJ order in which the Family Court specifies that the Petitioner's father abandoned him as defined under New York Social Services Law section 384-b(5)(a) and New York case law. Accordingly, the Petitioner has established on motion that the Family Court determined that parental reunification is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires. However, the Petitioner remains ineligible on another ground.

#### C. USCIS' Consent is Not Warranted

The Petitioner still has not met his burden of establishing that USCIS' consent to his SIJ classification is warranted. SIJ classification may only be granted upon the consent of 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. Section 101(a)(27)(J)(i)-(iii) of the Act; *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2, 6-7 (citing H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement "that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, 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 and the agency must consider whether the court's determinations were sought in proceedings granting relief from parental abuse, neglect, abandonment, or a similar basis under state law, beyond an order enabling an individual to file an SIJ petition with USCIS. *See* H.R. Rep. No. 105-405, at 130; *Budhathoki*, 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); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the juvenile sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the *USCIS Policy Manual* explained).

As we discussed on appeal, results from the Petitioner's biometrics indicate that the Petitioner identified himself as [redacted] a national of Nepal and a citizen of India, born on [redacted] 24, 1995, before a foreign government. By contrast, on his SIJ petition and underlying Family Court documents, he has identified himself as [redacted] a national and citizen of India, also born on [redacted] 24, 1995. Due to unresolved discrepancies regarding the Petitioner's identity, we determined on appeal that the evidence did not establish that he sought and was granted relief from parental maltreatment, and accordingly, that the Family Court's orders were sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, rather than primarily to obtain an immigration benefit. On motion, the Petitioner states that "upon being apprehended by Panama immigration, [he] gave his name as [redacted] and said he was a national of Nepal." He argues that despite his claims to the Panamanian authorities, he "submitted proof of identity to the family court" to show that he "is [redacted] who was born on [redacted] 9,<sup>2</sup> 1995 in India." As support for his assertions, he resubmits previously submitted identity documents, including school records and an identification card issued by the Government of India, bearing the name of [redacted] and the date of birth of [redacted] 24, 1995.

The Petitioner does not meet the requirements of a motion to reopen, as he does not state new facts or submit any new documentary evidence in support of his claims. 8 C.F.R. § 103.5(a)(2). Instead, he resubmits previously submitted evidence. He also does not meet the requirements of a motion to reconsider, as he has not established 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). The Petitioner admits that he used another identity before a foreign government, but does not explain why he did so or submit sufficient evidence to resolve the discrepancy between his two identities. Accordingly, as the Petitioner has not met the requirements for a motion to reopen or reconsider and has not established that USCIS' consent to his SIJ classification is warranted, he is ineligible for SIJ status and we will dismiss his motions.

---

<sup>2</sup> The Petitioner's identity documents indicate that he was born on [redacted] 24, 1995. The Petitioner's reference to a [redacted] 9, 1995 date on motion is not otherwise supported by the record.

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

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