



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

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

In Re: 21844840

DATE: NOV. 15, 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 a subsequent appeal. The matter is now before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner asserts that the record establishes her eligibility for SIJ classification, and she contends that we erred in our determination. Upon review, we will grant the motion to reconsider, and dismiss the motion to reopen.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record 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. Additionally, a review of any motion is limited to the bases supporting the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Thus, we examine any new facts and arguments to the extent that they pertain to our dismissal of the Petitioner's prior appeal.

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner 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 petitioner's best interest to return to his or her 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. The petitioner bears the burden of proof to demonstrate his or her 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

In [] 2019, when the Petitioner was 18 years old, the [] District Court in Colorado (district court) issued an order titled, *ORDER FOR ALLOCATION OF PARENTAL RESPONSIBILITIES* (Allocation order), and an *ORDER REGARDING REQUEST FOR ADDITIONAL FINDINGS ESTABLISHING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order), in determining necessary findings for SIJ eligibility under section 101(a)(27)(J) of the Act. The district court placed the Petitioner under the custody of her mother and found that the Petitioner’s reunification with her father was not viable due to abandonment and neglect. Finally, the district court determined that it was not in the Petitioner’s best interest to be removed from the United States and returned to Guatemala, her country of nationality.

In our prior decision, we determined that because the Petitioner was 18 years old at the time the proceedings were commenced, she was required to establish that the district court took jurisdiction over her as a juvenile under state law as section 101(a)(27)(J)(i) of the Act requires. We determined that the Petitioner did not meet her burden and therefore, we dismissed her appeal. The Petitioner timely filed a motion to reopen and motion to reconsider.

B. Juvenile Court

To be eligible for SIJ classification, petitioners must have been subject to a dependency or custody order issued by a “juvenile court,” which is defined as a court “in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a). While the specific title and type of court may vary, SIJ petitioners must establish that the court had competent jurisdiction under state law to make judicial determinations about their dependency and/or custody and care as a juvenile. 8 C.F.R. § 204.11(a), (d)(2)(i).

On motion, the Petitioner submits another copy of the SIJ order; another copy of the Allocation order; and copies of relevant sections of the Colorado statutes the district court relied on in making its decision, including section 14-10-123 of the Colorado Revised Statutes Annotated (Col. Rev. Stat. Ann.), which governs the allocation of parental responsibilities. With this evidence, the Petitioner submits a brief, arguing that we committed error in denying the SIJ petition because, in proceedings related to the allocation of parental responsibilities, Colorado law clearly defines “child” as one who has not attained 21 years of age. Col. Rev. Stat. Ann. § 14-10-123(1.5)(a). Upon review, in issuing the Allocation order, the district court exercised jurisdiction over the Petitioner as a child, as the term is defined in proceedings involving the allocation of parental responsibilities. Thus, the Petitioner has established that the district court took jurisdiction over her as a juvenile under state law as section 101(a)(27)(J)(i) of the Act requires. Because this was the sole reason for the Director’s denial, the

Petitioner has established that she is eligible for and merits USCIS' consent to her SIJ classification. Therefore, the motion to reconsider is granted and the appeal is sustained.

ORDER: The motion to reopen is dismissed.

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