



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

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

In Re: 22341670

DATE: NOV. 29, 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 San Antonio, Texas, Field Office (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed his appeal. Subsequently, this matter was before us twice on motion to reopen and reconsider. We denied the Petitioner's first combined motion to reopen and reconsider on the merits and denied a second combined motion as well. The Petitioner now files a third motion to reopen and reconsider, contending that he is eligible for SIJ classification.¹ Upon review, we will grant the motion to reconsider and sustain the appeal. The motion to reopen therefore will be dismissed as moot.

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 show that our prior 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

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)(i) of the Act; 8 C.F.R. § 204.11(b), (c)(1).² 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; 8 C.F.R. § 204.11(c)(1). 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

¹ The Petitioner's Form I-290B, Notice of Appeal or Motion, indicates that he is now seeking a motion to reopen before us. But as the underlying documents for the present motion indicate that he is filing a combined motion to reopen and reconsider, we will consider his filing as such.

² The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

U.S. Citizenship and Immigration Services (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 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 establish 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

In 2015, when the Petitioner was 19 years old, a Texas District Court for [REDACTED] (District Court) issued a temporary order in a “Suit Affecting the Parent Child Relationship” (SAPCR), in which the court asserted its jurisdiction over the Petitioner and his younger brother; found that they had been subject to parental abandonment and neglect under Texas Family Code (Tex. Fam. Code) sections 152.102 and 261.001(4); and determined that their reunification with both their parents was not viable due to neglect or abandonment and that it was not in their best interest to be returned to El Salvador, their country of nationality. The District Court also ordered the parents to provide prospective and retroactive child support, appointed the Petitioner’s uncle as “Sole Managing Conservator,” and designated the parents as “possessory conservator[s],” which, however, only allowed them restricted visitation rights requiring advance notice and the uncle’s agreement.

In response to the Director’s Request for Evidence, the Petitioner submitted a final SAPCR order issued in [REDACTED] 2016 when he was 20 years old and containing the same SIJ related determinations by the District Court set forth in the earlier temporary order. The 2016 order also clarified that the appointment of the parents as possessory conservators applied only to the Petitioner’s younger sibling.

The Director denied the SIJ petition, concluding that the SAPCR orders were not issued by a juvenile court because Texas defines a “child” as under the age of 18 and the Petitioner was over 18 when the orders were issued. We dismissed the Petitioner’s appeal on the same basis and further determined that the orders lacked qualifying determinations regarding juvenile dependency or custody and parental reunification.

In support of his first motion to reopen and reconsider to us, the Petitioner submitted a [REDACTED] 2017 order titled “ORDER ON MOTION TO CLARIFY IN [SAPCR]” (clarifying order). We denied the motion finding again that the record did not establish that the District Court was acting as a juvenile court at the time it issued the SAPCR orders, and even assuming that it was a juvenile court, its orders lacked

qualifying determinations regarding parental reunification and juvenile dependency or custody. We then denied the Petitioner's subsequent motion to reopen and reconsider as well.

On his motion to reconsider here, the petitioner maintains that he is eligible for SIJ classification. Upon further review of the record and the Petitioner's arguments, he has overcome the grounds for denial of his SIJ petition.

B. Juvenile Court

To be eligible for SIJ classification, juveniles 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 dependency and/or custody and care of juveniles." 8 C.F.R. § 204.11(a). While the specific title and type of state court may vary, SIJ petitioners must establish that the court had jurisdiction to make judicial determinations about their dependency and/or custody and care as juveniles under state law. *See id.* Because the dependency declaration or custodial placement and related SIJ findings must have been entered by a juvenile court while the Petitioner was a juvenile, the Petitioner must demonstrate that the court determined that he was a juvenile under state law and exercised jurisdiction over him accordingly. 8 C.F.R. § 204.11(c)(3)(i).

As the Petitioner asserts on motion, the record establishes that the District Court asserted jurisdiction over the petitioner as a juvenile, as its clarifying order specified that it asserted jurisdiction over him as a child under Tex. Fam. Code § 101.003(b) when it issued its orders after the Petitioner's eighteenth birthday. *See* Tex. Fam. Code § 101.003(b) (stating that "child" includes a person over eighteen years of age in the context of child support); *see generally* 6 USCIS Policy Manual J.2 (providing guidance that USCIS generally defers to the court on matters of state law and does not go behind the relevant order to make independent determinations as to the requisite SIJ determinations). Accordingly, a preponderance of the evidence establishes that the court issued the SAPCR orders pursuant to its jurisdiction over the Petitioner's dependency and care as a child under state law, and the orders were issued by a juvenile court as required by the Act and the relevant regulations. 8 C.F.R. §§ 204.11(a), 204.11(b)(4).

C. The District Court Made a Qualifying Declaration of Juvenile Dependency

SIJ petitioners must be declared dependent upon a juvenile court, or be legally committed to, or placed under the custody of, a state agency or department, or of an individual or entity appointed by a state or juvenile court. Section 101(a)(27)(J)(i) of the Act. The juvenile court's dependency declaration must be made in accordance with state law governing such declarations. 8 C.F.R. § 204.11(c)(1). As part of their burden to show eligibility for SIJ classification, petitioners must establish the state law that the juvenile court applied in its dependency declaration. Here, the record on motion reflects the District Court made a qualifying declaration of juvenile dependency.

The Petitioner correctly points out that an SIJ petitioner need not be declared dependent upon a juvenile court *and* placed under the custody and care of an individual or entity. The record shows that the Petitioner was declared dependent on the District Court, as specified in the clarifying order which states that he "is dependent on this Court pursuant to the Court's authority under Texas Family Code

154.001(a)(1) and 154.002.” Thus, the District Court made a qualifying juvenile dependency declaration under applicable state law, and we withdraw our previous finding to the contrary.

D. The District Court Made a Qualifying Parental Reunification Determination

On motion, the Petitioner has also overcome our prior determination that the District Court lacked a qualifying parental reunification determination. The Act requires a juvenile court’s determination that SIJ petitioners 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. This reunification determination must be made under state law. *See id.*; *see also* 8 C.F.R. § 204.11(c)(1).

Here, the record shows that the District Court, consistent with the factual assertions the Petitioner presented to the court, specifically determined that his reunification with both his parents was not viable due to their abandonment and neglect and cited applicable Texas child welfare provisions. 8 C.F.R. § 204.11(d)(5)(i) (requiring a factual basis for the requisite SIJ related determinations).³ Accordingly, the Petitioner has established that the District Court made a qualifying parental reunification determination under section 101(a)(27)(J)(i) of the Act.

The Petitioner has overcome our previous determinations on appeal and has otherwise demonstrated that he meets the remaining eligibility criteria and that his request for SIJ classification warrants USCIS’ consent. 8 C.F.R. §§ 204.11(b), (d). Therefore, the Petitioner has established his eligibility for SIJ classification under the Act.

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

³ The court’s initial appointment of the Petitioner’s parents as possessory conservators in its first SAPCR order does not conflict with the parental reunification determination as that order restricts the parents’ visitation rights requiring advance notice and the uncle’s agreement. Further, the court’s subsequent SAPCR order indicates that the parents’ possessory conservatorship applied only to the Petitioner’s younger sibling.