



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

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

In Re: 19956745

Date: OCT. 11, 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 the Petitioner's appeal. The matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

I. LAW

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(c).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.

Petitioners bear the burden of proof of demonstrating their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship

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). The regulation cited here has been superseded and is located at 8 C.F.R. § 204.11(b).

and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria and establishes that the juvenile court order was sought in proceedings granting 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 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy).² The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

In 2016, when the Petitioner was 17 years old, a District Court in [REDACTED] Texas issued an *Order on Petition for Declaratory Judgment* (order) in which it entered findings relevant to the Petitioner's eligibility for SIJ classification. The court found that the Petitioner was dependent on the District Court, that his reunification with his father was not viable due to abandonment and neglect, and that it was not in his best interest to return to El Salvador, his country of nationality. The Petitioner filed his petition based on the District Court's order.

The Director denied the SIJ petition, finding that the Petitioner was ineligible because the record lacked a qualifying declaration of dependency or custody placement. Specifically, the Director determined that the dependency declaration was not issued under Texas law governing juvenile dependency or child custody. The Director further determined that the Petitioner's request for SIJ classification did not merit USCIS' consent because the Petitioner had not shown that the order was sought to obtain relief from parental maltreatment.

In our previous decision, incorporated here by reference, we determined that the district court made a qualifying declaration of dependency under Texas law; however, we determined that the Petitioner did not warrant USCIS' consent, as he did not establish, by a preponderance of the evidence, that the order provided any protective or remedial relief from his father's abandonment and neglect, and only issued findings that would enable the Petitioner to seek SIJ classification from USCIS.

On motion, the Petitioner submits a brief. In his brief, the Petitioner claims that USCIS is questioning the district court's judgement and states that "these findings clearly indicate the *need* for "relief or remedy from parental abuse, neglect, abandonment, or a similar basis under state law" and that [the Petitioner] "sought the court order to obtain relief from parental maltreatment and not primarily to obtain an immigration benefit"" (emphasis added). As is emphasized, the Petitioner had the *need* for relief or remedy, but the order itself does not provide any, aside from finding that the Petitioner is dependent on the court. The record continues to lack evidence to demonstrate how the declaratory judgment protects him from parental maltreatment. The Petitioner further raises the definition of "dependent" under Texas law; however, the Petitioner appears to be conflating the requirements for a dependency determination with the requirement to show that he warrants USCIS' consent. Since our

² The USCIS Policy Alert issued on June 10, 2022, noted that the SIJ final rule and policy update superseded the guidance found in Administrative Appeals Office adopted decisions: *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019); *Matter of A-O-C-*, Adopted Decision 2019-03 (AAO Oct. 11, 2019); and *Matter of E-A-L-O-*, Adopted Decision 2019-04 (AAO Oct. 11, 2019). USCIS Policy Alert PA-2022-14, *Special Immigrant Juvenile Classification and Adjustment of Status*, 2 (Jun. 10, 2022). <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf>.

dismissal of his appeal determined that the district court made a qualifying dependency determination, this argument is moot. The Petitioner claims that the section of law cited in the order, Section 24.601 of the Texas Government Code, itself provides the relief; however, we found on appeal that this section of Texas law describes the jurisdiction of the family court and does not outline relief provided to individuals under the family court's jurisdiction.

Finally, the Petitioner argues that our citation of *Matter of E-A-L-O-* is inaccurate as his case is “wholly distinguishable” from that precedent decision, and revisits arguments regarding the dependency determination, while also noting that he was over 18 unlike the petitioner in *E-A-L-O-* and argues that his order made explicit findings of dependency. Our inclusion of *E-A-L-O-* was regarding a specific section of that decision which concluded that USCIS' consent was not warranted, in part, because the petitioner did not show that the relevant court order provided him with any protective or remedial relief pursuant to applicable child welfare provisions or any other relevant state law. *See Matter of E-A-L-O-*, Adopted Decision 2019-04, at 7-8 (AAO Oct. 11, 2019).³ In this case, we find that the Petitioner's assertions on motion are insufficient to establish that the dependency declaration or the declaratory judgment, generally, provides actual relief or protection from the father's abandonment and neglect.

As the Petitioner has not cited any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy or established that our decision was incorrect based on the evidence of record at the time of the initial decision, his motion to reconsider is dismissed, and his SIJ petition remains denied.

ORDER: The motion to reconsider is dismissed.

³ As previously noted, the USCIS Policy Alert issued on June 10, 2022, noted that the SIJ final rule and policy update superseded the guidance found in Administrative Appeals Office adopted decisions, including *Matter of E-A-L-O-*. USCIS Policy Alert PA-2022-14, *Special Immigrant Juvenile Classification and Adjustment of Status*, 2 (Jun. 10, 2022). <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf>. The SIJ final rule updated the regulations and provides that dependency declarations alone are not enough to show that consent is warranted without evidence of “dependency on the court for the provision of child welfare services and/or other court-ordered or court-recognized protective or remedial relief” (emphasis added). 8 CFR § 204.11(d)(5)(ii)(B).