



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

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

In Re: 18335742

Date: OCT. 12, 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, concluding that USCIS' consent to SIJ classification was not warranted as the court did not provide some form of relief to protect the Petitioner from parental abuse, abandonment, neglect, or a similar basis under state law. We dismissed the Petitioner's appeal, and the matter is now before us on a motion to reopen and reconsider. Upon review we will dismiss the motions.

I. LAW

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(b).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.

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 the Department of Homeland Security (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.

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).

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 demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

A motion to reconsider is based on an incorrect application of law or policy to the prior decision and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). 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

The Petitioner is a native and citizen of Ecuador who entered the United States without inspection in December 2014, when he was 16 years old. In [] 2017, the [] Probate and Family Court in Massachusetts issued an Order of Special Findings of Fact and Rulings of Law (SIJ order) and subsequently issued an Affirmed and Amended Special Findings of Facts and Rulings of Law *nunc pro tunc* to the date of the SIJ order. The court declared the Petitioner to be dependent on it in accordance with Massachusetts General Laws (MGL), chapter 119, section 39M, and determined it was not viable for the Petitioner to reunify with his parents as their failure to provide basic necessities constituted abuse, neglect, and abandonment. The court cited to Massachusetts case law in support of its findings. The court also found it not in the Petitioner's best interest to return to Ecuador because returning to live with his parents would adversely affect his physical, mental, and emotional health and no other adults could ensure his safety. The order referred to a separate Amended Judgment of Dependency, however this document is not in the record. The Petitioner filed his SIJ petition in July 2017 based on the court orders.

The Director determined that USCIS' consent was not warranted because the court did not provide some form of relief to protect the Petitioner from parental abuse, abandonment, neglect, or a similar basis under state law. The Petitioner appealed the denial, asserting that the nature and purpose of the court proceedings were to protect him from parental neglect and abandonment and that he obtained the court's SIJ orders to gain access to further protections and benefits available under Massachusetts law, rather than to seek an immigration benefit. The Petitioner asserted specifically that MGL chapter 119, section 39M allows him to seek other forms of relief.

In dismissing the Petitioner's appeal, we determined that USCIS' consent was not warranted because he had not established that his primary purpose in seeking the court decree was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit. We further concluded that although the court orders considered whether the Petitioner was mistreated by his parents and the amended order indicated that the findings were made to protect him from future neglect and harm in accordance with commonwealth law, the Petitioner had not established that he requested the court provide any protective or remedial relief for maltreatment pursuant to the Massachusetts child protection provisions or any other Massachusetts law, apart from

findings enabling him to file an SIJ petition with USCIS. We observed that the Petitioner's affidavit to the court requested SIJ findings to allow him to remain in the United States but that he did not request a custody or guardianship finding, or any other protective or remedial relief for maltreatment under Massachusetts law and the court did not issue any orders or referrals to support his health, safety, and welfare under section 39M provisions as relief from parental maltreatment found under commonwealth law.

C. USCIS' Consent

Again, to warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). Documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.*

On motion the Petitioner submits for the first time a [redacted] 2021 Amended Decree of Special Findings of Facts and Rulings of Law Date [redacted] 2017 Nunc Pro Tunc, issued by the [redacted] Massachusetts family court. The decree reasserts the court's jurisdiction and that the Petitioner was neglected and abused by his parents as defined by commonwealth law and abandoned similar to abandonment under commonwealth law, therefore making reunification not viable. The decree further found that "having considered health, educational, developmental, physical, and emotional interests" of the Petitioner, return to Ecuador was not in his best interest, and that: "These orders shall provide for [the Petitioner's] safety and well-being, and protects [him] from future harm. These findings are made to protect [the Petitioner] from future harm as well as establish residency and eligibility for healthcare."

The Petitioner argues that the court order was not given only for immigration benefit but to protect him from parental neglect and abandonment, and he refers to section 39M stating that when courts issue special findings the health and safety of the child is paramount and court should consider whether past or present living conditions will adversely affect physical, mental, or emotional health. He maintains that the third court order, submitted on motion, again found actions of his parents constituted neglect, abuse and abandonment under Massachusetts law while the findings were made to protect him from further harm and to establish residency and eligibility for healthcare. The Petitioner argues that the Judgment of Dependency is the main benefit he sought at court as it allows him access to further benefits that section 39M allows him to seek, such as abuse prevention, back child support, or referral to medical or psychological services. The Petitioner asserts that because the judge did not make such referrals in the order does not change that the Petitioner has the ability to seek these remedies using the order as a basis, so it was sought not for immigration purposes but rather to protect him from future harm. He argues that he meets all the SIJ criteria, and that consent is warranted because the court findings were issued as a basis for support in order to protect him from future harm and seek support under Massachusetts law.

Review of the record does not indicate that the court provided any protective or remedial relief for maltreatment pursuant to the Massachusetts child protection provisions or any other Massachusetts

law. We recognize that section 39M provides for certain relief in the form of “orders necessary to protect the child against further abuse or other harm,” including complaints for abuse prevention or support, as well as court-provided referrals for “psychiatric, psychological, educational, occupational, medical, dental or social services or . . . protection against trafficking or domestic violence.” Mass. Gen. Laws ch. 119, § 39M (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113.

However, mention of section 39M in the Petitioner’s court order does not establish that a juvenile sought and was provided relief from parental maltreatment beyond an order enabling the juvenile to file for SIJ classification. *See* 8 C.F.R. § 204.11(d)(5)(ii). As indicated above, the amended SIJ order stated that: “These orders shall provide for [the Petitioner’s] safety and well-being, and protects [him] from future harm. These findings are made to protect [the Petitioner] from future harm as well as establish residency and eligibility for healthcare.” A dependency declaration is insufficient to warrant USCIS’ consent to SIJ classification absent evidence that the court issued the dependency declaration in juvenile court proceedings that actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5). There is no evidence in the record that the court orders granted the Petitioner any specific relief related to the abandonment or neglect he endured in the past, or that the court took jurisdiction over the Petitioner in any other prior or related proceeding providing him with any type of relief or remedy from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law. The court did not issue any specific orders or referrals to support the Petitioner’s health, safety, and welfare under the section 39M provisions as relief from parental maltreatment, as required by 8 C.F.R. § 204.11(d)(5)(ii). *See* Massachusetts General Laws, ch. 119, section 39M.

To warrant USCIS’ consent, the requisite SIJ determinations must be made under state law in connection with proceedings in which a petitioner seeks and is granted some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law. *See* 8 C.F.R. § 204.11(d)(5)(ii). The Petitioner has not established that such relief was sought and granted in this case, thus USCIS’s consent to a grant of SIJ classification is not warranted.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.