



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

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

In Re: 21361717

Date: OCT. 28, 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 combined motion to reopen and reconsider. Upon review, the Petitioner has established his eligibility and the motion to reopen will be granted and the appeal is sustained. The motion to reconsider is moot.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). 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(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.

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).

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. Section 101(a)(27)(J)(i)–(iii) of the Act; 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner is a citizen of Bangladesh. In [REDACTED] 2017, when he was 19 years old, the New York Family Court for [REDACTED] (Family Court) appointed guardianship of the Petitioner to M-H.² The same day, the Family Court separately issued an *ORDER-Special Immigrant Juvenile Status* (SIJ order) making determinations related to the Petitioner’s SIJ eligibility, which indicated that reunification with one or both of his parents were not viable due to abandonment and neglect because the Petitioner’s father died in 2012, and that his mother “has been taking care of 5 other children in Bangladesh.” The SIJ order further noted that it was not in the best interest of the Petitioner to be returned to Bangladesh.

In March 2017, based upon the Family Court’s orders, the Petitioner filed his SIJ petition. While the petition was pending, the Director issued a notice of intent to deny (NOID). In response to the NOID, the Petitioner submitted an *Order Regarding Minor’s Eligibility for Special Immigrant Juvenile Status Amended* (amended SIJ order). The Director denied the SIJ petition for lack of a qualifying parental reunification determination, concluding that the evidence did “not establish that the state court had jurisdiction under state law to make a legal conclusion about returning [the Petitioner] to [his] parent(s)’ custody” because he had already reached the age of majority in New York when the Family Court orders were issued.

In our prior decision, incorporated here by reference, we noted that we informed the Petitioner of his inclusion in the *RFM v. Nielsen* class and withdrew the Director’s findings; however, we dismissed the Petitioner’s appeal as neither the initial SIJ order nor the amended SIJ order contained citations to New York state law when the Family Court made its findings that the Petitioner could not reunify with one or both of his parents on the basis of abandonment or neglect. The Family Court further did not provide any New York state law citation for how it reached its best interest determination that the Petitioner should not be returned to Bangladesh.

On motion, the Petitioner submits a brief and an *AMENDED ORDER-Special Immigrant Juvenile Status* (third SIJ order).

² We use initials to protect the identity of individuals.

B. Motion to Reopen

The Petitioner's motion to reopen is supported by the issuance of the third SIJ order. While the third SIJ order references the New York Family Court Act section 115(c) regarding its reunification determination with the Petitioner's father, which only provides for the jurisdiction of the court over custody proceedings when a parent is deceased, the Family Court includes further citations regarding the findings of abandonment, neglect, and abuse in its reunification determination with the Petitioner's mother. In the third SIJ order, the Family Court notes that reunification with the Petitioner's mother was not viable due to abandonment and neglect under New York Social Services Law § 384-b(5)(a) and abuse under the New York Family Court Act section 1012(e)(ii). The third SIJ order notes that the Petitioner was abandoned by his mother in 2015 and had "not provided financial support toward [the Petitioner's] basic needs and education goals for more than six months." The third SIJ order further found that the Petitioner's mother had "not expressed a desire to be reunited" with the Petitioner and "willfully failed to provide a minimum degree of care" toward the Petitioner's needs. As this third SIJ order includes citations to applicable New York state law to support the findings, we withdraw our prior determination that the order lacked a judicial finding under New York state law that reunification with one or both of the Petitioner's parents was not viable.

In the third SIJ order, the Family Court again expounds upon its previous findings regarding the Petitioner's best interest in not being returned to Bangladesh. In support of its findings, the Family Court cites several prior cases heard in New York courts and states that the Petitioner "is living in a safe home environment where his needs are met and [the Petitioner] is encouraged to complete his education. This is in the best interest of [the Petitioner] because it results in the positive development of his happiness and welfare," citing *Eschbach v. Eshbach*, 56 N.Y.2d 167 (1982), which found that "[a]ny court in considering questions of child custody must make every effort to determine 'what is for the best interest of the child, and what will best promote its welfare and happiness.'"

Accordingly, the record establishes the state law upon which the Family Court based its findings. Specifically, the Petitioner has shown by a preponderance of the evidence that the Family Court made qualifying parental reunification and best interest determinations under New York law, as section 101(a)(27)(J)(i) of the Act requires. As a result, the Petitioner has also overcome our prior determination that the SIJ orders lacked a qualifying parental reunification determination and best interest determination. In our review of the record, the Petitioner was placed in the care and custody of M-H-, and the court determined that he could not reunify with one or both of his parents. Further, the court determined that it was not in the Petitioner's best interest to be returned to Bangladesh. The Petitioner has also established that his request for SIJ classification is *bona fide* and, as such, warrants USCIS consent.

C. Motion to Reconsider

As noted, 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. As we have determined that the Petitioner's motion to reopen would be granted and the appeal sustained, the motion to reconsider is moot.

III. CONCLUSION

The Petitioner has met his burden to establish that the Family Court orders contained qualifying parental reunification and best interest determinations and is eligible for and merits USCIS' consent to his SIJ classification. The Director's decision is withdrawn and the motion to reopen is granted and the appeal is sustained. The motion to reconsider is moot.

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