



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

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

In Re: 14305815

Date: SEP. 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed the Petitioner's appeal and subsequent motion to reopen. The matter is now before us on a motion to reconsider. Upon review, we will grant the motion to reconsider and sustain the appeal.

**I. LAW**

A motion to reconsider must state the reasons for reconsideration, be supported by any pertinent precedent 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). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

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).<sup>1</sup> 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 parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii); 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

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<sup>1</sup> 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).

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). 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).

## II. ANALYSIS

### A. Procedural History

The Petitioner, a native and citizen of Guatemala, entered the United States without inspection in [ ] 2015. In [ ] 2016, when the Petitioner was 18 years old, the [ ] Probate and Family Court in Massachusetts (Family Court) issued a DECREE OF SPECIAL FINDINGS OF FACT AND RULINGS OF LAW (SIJ order). Based on the SIJ order, the Petitioner filed his SIJ petition. The Director determined that the Petitioner was over 18 years old at the time the Family Court entered its SIJ order, he was no longer a juvenile under Massachusetts law when it was entered, and therefore his SIJ order was not issued by a juvenile court making a custody and care determination for a juvenile. In addition, the Director determined that the SIJ order lacked a qualifying declaration of dependency or placement of custody. We dismissed the Petitioner's appeal, concluding that the SIJ order did not contain a qualifying parental reunification determination. We did not reach any other grounds of ineligibility for SIJ classification.

On motion, the Petitioner submitted an AMENDED DECREE FINDINGS OF FACT AND RULINGS OF LAW (amended order), issued by the Family Court *nunc pro tunc* to the date of the SIJ order. In response to a notice of intent to deny, the Petitioner submitted an AMENDED SPECIAL FINDINGS OF FACT AND RULINGS OF LAW (second amended order), also issued by the Family Court *nunc pro tunc* to the date of the SIJ order. We determined that the Family Court was a juvenile court, within the meaning of the Act and as defined at 8 C.F.R § 204.11(a); the Petitioner was declared dependent upon the juvenile court in accordance with a Massachusetts law governing such declarations; and the juvenile court made a qualifying determination that the Petitioner could not reunify with his mother due to neglect under Massachusetts law. However, we also concluded that USCIS' consent to a grant of SIJ classification was not warranted, as the record showed that the Petitioner primarily sought the juvenile court decree to obtain an immigration benefit rather than to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law.

### B. USCIS' Consent

The issue before us is whether USCIS' consent is warranted. Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act. To warrant USCIS' consent, juveniles must establish that the request for SIJ classification was *bona fide*, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5);

*see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought “primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect”). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS’ consent is warranted. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ findings). Evidence of relief from parental abuse, neglect, abandonment, or a similar basis under state law may include court-ordered dependency on the court for the provision of child welfare services and/or other court-ordered or court-recognized protective or remedial relief. 8 C.F.R. § 204.11(d)(5)(ii)(B).

On motion, the Petitioner states that he sought relief in proceedings under Mass. Gen. Laws ch. 119 § 39M (section 39M). The application of section 39M does not, by itself, establish that a juvenile sought relief from parental maltreatment beyond an order enabling the juvenile to file for SIJ classification. However, section 39M(d) provides for certain relief in the form of court-ordered referrals for “psychiatric, psychological, educational, occupational, medical, dental or social services or protection against trafficking or domestic violence.” The Family Court, in its *nunc pro tunc* second amended order, referred the Petitioner to probation for services pursuant to section 39M. The Family Court specified “[t]he above findings were entered to provide the [Petitioner] relief from the neglect of his mother . . . [and] were further entered to provide for his health, safety, and welfare, to establish residence for the purpose of healthcare and other benefits for which he is eligible in Massachusetts, to allow the [Petitioner] to seek services . . .” The record reflects that the Petitioner has provided sufficient evidence of relief from parental neglect as provided in 8 C.F.R. § 204.11(d)(5)(ii)(B).

The Petitioner has established by a preponderance of the evidence that a primary reason he sought the juvenile court order was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law. Consequently, the Petitioner has demonstrated that our prior decision was based on an incorrect application of law or policy and he is eligible for and merits USCIS’ consent to his SIJ classification.

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