



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

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

In Re: 12923277

Date: SEP. 30, 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 Long Island, New York Field Office (Director) revoked the approval of the petition and we dismissed the Petitioner's subsequent appeal. The matter is now before us on a combined motion to reopen and reconsider. On motion, the Petitioner submits a brief and amended order to establish his eligibility for SIJ classification. Upon review, we will grant the motion to reopen. The motion to reconsider is moot.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our 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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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).¹

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). The petitioner bears 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).

USCIS may revoke approval of an SIJ petition at any time for good and sufficient cause. Section 205 of the Act, 8 U.S.C. § 1155; 8 C.F.R. § 205.2. We review appeals from revocation proceedings *de novo*. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 542 n.1 (AAO 2015).

II. ANALYSIS

In [REDACTED] 2015, when the Petitioner was 20 years old, the New York Family Court for [REDACTED] (Family Court) appointed guardianship of the Petitioner to K-S-². In a separate order on the same date, the Family Court issued an ORDER-SPECIAL JUVENILE STATUS (SIJ order) making determinations related to the Petitioner’s SIJ eligibility. The Director initially approved the SIJ petition, then revoked approval, concluding the record contained neither qualifying parental reunification nor best interest determinations, and the Petitioner did not warrant consent to SIJ classification. In our appeal decision, we acknowledged the Petitioner cited to New York case law on appeal demonstrating the Family Court made a best interest determination for him, and the Petitioner is a member of the *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. Mar. 15, 2019), class of SIJ petitioners. However, we determined the record still did not contain a qualifying parental reunification determination as the Petitioner’s SIJ order did not contain the state law basis or specify the specific ground for such determination.

On motion, the Petitioner submits an AMENDED ORDER-SPECIAL FINDINGS (amended order) issued by the Family Court. The Family Court specified the amended order was issued “after examining the motion papers, supporting affidavits, pleadings and prior proceedings in this matter, and/or hearing testimony,” and in accordance with “New York Family Court Act § 661, and Domestic Relations Law § 240.” The Family Court declared the Petitioner dependent on the court in accordance with New York case law and “New York Family Court Act 141.” The Family Court determined the Petitioner’s reunification with his father is not viable due to abuse and neglect under New York case law and “N.Y. Fam. Ct. Act. § 1012(e)(ii)” and “N.Y. Fam. Ct. Act § 1012 (f),” as he “repeatedly subjected [Petitioner] to cruel punishment by locking him in a room with his hand and feet bound and depriving him food and water for 24 hours at a time.” The Family Court further determined it would not be in the Petitioner’s best interest to return to India because he “has no one in India willing to give him a home,” if he returned to India “he will continue to be abused and neglected by [his] father,” and his “mother is not able to protect [Petitioner]” Accordingly, the Petitioner has established by a preponderance of the evidence that the juvenile court determined he could not be reunified with his father due to abuse and neglect under New York state law, as section 101(a)(27)(J)(i) of the Act requires.

In addition, the Petitioner has met his burden to establish that he is eligible for and merits USCIS’ consent to his request for SIJ classification. The Director previously determined the Petitioner does

² Initials are used to protect the individual’s identity.

not warrant USCIS' consent. The Director determined the Petitioner did not demonstrate the Family Court made an informed decision in issuing the SIJ order since the record did not establish the factual basis of the Family Court's determinations or that the request for SIJ classification is *bona fide*. Specifically, the Director concluded the record did not establish the factual basis of the Family Court's determinations since: 1) the Petitioner did not mention the abuse and neglect of his father during his credible fear interview, and 2) a ration card submitted in support of his asylum application erroneously listed his age as 13 on a date he would have been 12 years of age.

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). A request for SIJ classification must be *bona fide* for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5).

During the Petitioner's credible fear interview, he was only generally asked about having been threatened or harmed in the context of asylum and was not specifically asked if his father or any other family members had harmed him. As such, the Petitioner's failure to disclose his father's abuse and neglect upon entry to the United States does not inherently conflict with or contradict his SIJ petition assertions and the Family Court's findings of parental neglect and abuse. Further, the Director's denial erroneously concludes that if the Petitioner were 13 years of age on the listed ration card date, he would necessarily be over 21 years of age at the time of SIJ petition filing. The record contains an official birth certificate for the Petitioner reflecting his claimed date of birth. Overall, the Director's findings do not constitute material conflicts related to SIJ classification requirements.

In addition, we do not go behind a court order to reevaluate determinations of abuse, neglect, abandonment, or a similar basis properly made under state law. *See* 87 Fed. Reg. 13066, 13086 (March 8, 2022) ("USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law."); *see also* 6 USCIS Policy Manual J.2(A), <https://www.uscis.gov/policy-manual> (providing guidance to officers on deference to juvenile court determinations made under state law and explaining that we do not go behind a juvenile court order to make independent determinations about abuse, neglect, abandonment, or a similar basis under state law). Here, the Petitioner has met his burden of demonstrating the Family Court appointed a guardian who would have care and custody of him and he was declared dependent on the Family Court based upon his father's abuse and neglect. The Petitioner's amended order, as submitted on motion and as stated above, includes a finding that the Petitioner's father "repeatedly subjected [Petitioner] to cruel punishment by locking him in a room with his hand and feet bound and depriving him food and water for 24 hours at a time." The amended order further specifies it would not be in the Petitioner's best interest to return to India because he "has no one in India willing to give him a home," and if he returned to India "he will continue to be abused and neglected by [his] father," and his "mother is not able to protect [Petitioner]" In totality, we find the Petitioner established the Family Court's order contains reasonable factual bases for its determinations and we find no basis for withholding USCIS' consent to his request for SIJ classification.

III. CONCLUSION

The Petitioner has met his burden to establish that he is eligible for and warrants USCIS' consent to his SIJ classification.

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