



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

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

In Re: 19075125

Date: SEP. 30, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of India, 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 District Director of the New York, New York Field Office (Director) approved the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). The Director issued a notice of intent to revoke (NOIR), and then revoked approval of the Petitioner's SIJ petition. We dismissed the Petitioner's appeal and a subsequent combined motion to reopen and reconsider. He now files a second motion to reopen and reconsider.¹ Upon review, we will grant the motion to reopen and sustain the appeal. 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).² 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

¹ In support of his combined motion, the Petitioner submits an *Amended Order-Special Findings*, and asserts that his SIJ petition was unlawfully revoked and should be reconsidered according to the amended judgment in *R.F.M v. Nielsen*.

² 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).

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.

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

In 2015, when the Petitioner was 20 years old, the New York Family Court for [REDACTED] (Family Court) appointed guardianship of the Petitioner to C-K-,³ finding that such “appointment shall last until [the Petitioner]’s 21st birthday” The same day, the Family Court issued an *Order-Special Juvenile Status* (SIJ order), determining that the Petitioner was “dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court.” The Court found that the Petitioner’s reunification with his father was not viable due to abuse, neglect, and abandonment. Specifically, the Court noted that reunification was not viable “due to abuse by the [Petitioner’s] father by selling [him] into slave labor to satisfy a business debt.” The Court further found that it was not in the Petitioner’s best interest to be removed from the United States and returned to India, his country of nationality.

In May 2015, based upon the Family Court’s orders, the Petitioner filed his SIJ petition. The Director denied the petition, concluding that the record did not establish that the Family Court had jurisdiction over the Petitioner’s custody as a juvenile to be considered a juvenile court for SIJ classification. The Director also concluded that the Family Court’s orders lacked qualifying determinations regarding the Petitioner’s best interest and the viability of his reunification with his father. Further, the Director concluded that USCIS’ consent to the Petitioner’s request for SIJ classification was not warranted. We dismissed the Petitioner’s appeal, concluding that the record did not contain a qualifying parental reunification determination made pursuant to state law.⁴

In our decision on first motion, we acknowledged the Petitioner’s assertion that his Memorandum of Law (memorandum) referenced New York law, and that the Family Court considered it in making its SIJ findings. However, we determined that “the copy [of the memorandum] submitted on motion [wa]s not signed by the Petitioner’s counsel and d[id] not display any stamp, receipt, or other evidence

³ Initials are used to protect the individual’s privacy.

⁴ Specifically, we noted that the Petitioner’s SIJ order cited only to section 101(a)(27)(J) of the Act and did not cite to or reference any New York law as the basis for the Family Court’s determinations, including the parental reunification determination.

indicating that the Family Court received and considered the information contained therein in the course of issuing its judicial determinations.” We subsequently dismissed the Petitioner’s combined motion to reopen and reconsider, concluding that he had not established, by a preponderance of the evidence, that the Family Court’s parental reunification determination was made pursuant to New York law.

On second motion, the Petitioner has established his eligibility for SIJ classification. In [] 2021, the Family Court issued an *Amended Order-Special Findings* (amended order) stating that the Petitioner’s father sold him into slave labor, which constituted abandonment under New York caselaw. Furthermore, the Family Court stated that, “[u]nder New York law, a parent has a statutory obligation to support his or her child until such time as the child reaches 21 years of age. (see Family Ct. Act § 413[1][a]).” Accordingly, the Petitioner has established on motion that reunification with his father is not viable due to abuse, neglect, abandonment, or a similar basis under state law, and USCIS’ consent to his SIJ classification is warranted, as section 101(a)(27)(J)(i) of the Act requires.

B. USCIS’ Consent is Warranted

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). In addition, these 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.* An example of court-recognized remedial relief includes the recognition of a petitioner’s placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement. *Id.*

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). To demonstrate a bona fide request, a petitioner must establish that a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS’ may withhold consent. *Id.*

We determined that USCIS’ consent was not warranted because the record lacked a qualifying parental reunification determination based on state law. As discussed above, the record on motion establishes that the Family Court determined that reunification with the Petitioner’s father was not viable due to actions which constituted abandonment under New York law. The Petitioner has established that the Family Court made a qualifying parental reunification determination. Accordingly, USCIS’ consent to the Petitioner’s SIJ classification is warranted, and we withdraw our decision to the contrary.

ORDER: The motion to reopen is granted and the appeal is sustained.⁵

⁵ As we are granting the Petitioner’s motion to reopen, we will not further address his arguments regarding a motion to reconsider.