



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

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

In Re: 20283780

Date: SEPT. 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 National Benefits Center denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) and we dismissed the appeal. The matter is now before us on a combined motion to reopen and to reconsider. On motion, the Petitioner submits a brief asserting his eligibility for SIJ classification and that we erred in our analysis determining otherwise. Upon review, we will dismiss the motions.

## **I. LAW**

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>

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. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5); see 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 *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

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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).

purpose” of a request for SIJ findings); see also 6 USCIS Policy Manual J.2(D), <https://www.uscis.gov/policymanual>, (explaining, as guidance, that in exercising consent, USCIS looks to the juvenile court’s determinations, the factual bases supporting those determinations, and the relief provided or recognized by the juvenile court).

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent 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). 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

The Petitioner, a native and citizen of Honduras, entered the United States in 2015, when he was about 16 years old. In [ ] 2017, the District Court for the [ ] Judicial District in [ ] Texas issued an “Order of Declaratory Judgment and Findings.” The Court made the following relevant findings in the order after a hearing and reviewing the evidence: that it had subject matter and personal jurisdiction, and the Petitioner was released from custody of the Department of Health and Human Services Office of Refugee Resettlement to a family friend. The Court discussed the Petitioner’s circumstances in Honduras and determined that he was constructively abandoned by his mother pursuant to Texas law when she died and did not provide for his care and supervision. The Court also determined that the Petitioner’s father neglected and abandoned him pursuant to Texas law when he ceased to live with him in Honduras and provide economic and emotional support. In April 2017, based on this order, the Petitioner filed a petition for SIJ classification.

The Director denied the SIJ petition on several grounds and the Petitioner appealed the decision. During the adjudication of the appeal, we issued a notice of intent to dismiss (NOID), explaining that the Petitioner had overcome one of the grounds of the dismissal, i.e., that the Court made a qualifying declaration of dependency, but had not demonstrated that USCIS’ consent was warranted. More specifically, we explained that the Petitioner had not established that a primary purpose for seeking the Court’s order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than an immigration benefit. The Petitioner responded to the NOID, submitting a brief and additional evidence. As discussed in our appeal decision, which we incorporate herein by reference, the Petitioner did not establish by a preponderance of the evidence that USCIS’ consent was warranted. We stated, in relevant part, that the Court’s dependency declaration was absent evidence that actual relief from parental maltreatment was granted, which is generally not sufficient to warrant USCIS’ consent. We noted that the order stated its purpose was “to protect the [Petitioner] from further neglect and abandonment” and that the Court “expressly reserve[d] the right to make orders necessary to clarify th[e] Order.” However, we explained the evidence was not sufficient to establish that the order was sought by the Petitioner to compel an action that provided relief from parental abuse or neglect or abandonment. The Petitioner files a motion to reopen and to reconsider asserting his request for SIJ classification is bona fide and we erred in our analysis on appeal. We have reviewed the Petitioner’s arguments on motion and conclude they are unsupported by the record.

On motion, the Petitioner asserts that we have sustained similar appeals to his in the past and our dismissal was arbitrary and capricious. However, the Petitioner does not provide copies or citations to these “similar appeals” in support of his assertion.<sup>2</sup> Later in his motion brief, the Petitioner likens his case to Matter of D-Y-S-C-, Adopted Decision 2019-02 (AAO Oct. 11, 2019). While adopted AAO non-precedent decisions provide policy guidance to USCIS employees in making determinations on applications and petitions for immigration benefits, the Petitioner here has not established that his case is similar to the adopted decision. In Matter of D-Y-S-C-, we sustained the appeal, concluding, in relevant part, that the petitioner established the purpose of the juvenile court proceedings was to protect her from parental maltreatment as the Court’s order removed the petitioner from her father’s custody, denied him access to her, and appointed a state agency custodianship. The Court’s order in Matter of D-Y-S-C- provided protective and remedial relief from parental maltreatment. Here, the Court’s order did not discuss relief, but rather reserved the right to make clarifying orders. On motion, the Petitioner’s counsel states, “due to the facts presented at the time . . . [the Petitioner] was living with a family friend [and] the Court did not feel the need to intervene further.” Counsel asserts it is important for us to consider that the Court reserved the right to make changes “to address health, safety, welfare or other needs if the need arose in the future.” While we acknowledge this fact, the order does not contain language referring to the Petitioner’s “health, safety, welfare or other needs” and no subsequent clarifying orders were issued by the Court providing relief under Texas law. Furthermore, the Petitioner’s statements about being cared for by a family friend and the Court’s determination that no further intervention was necessary do not support the Petitioner’s assertions that the Court’s order provided relief from parental abuse, neglect, abandonment, or a similar basis under state law.

The Petitioner also asserts that the Court ordered dependency can, in and of itself, be the qualifying relief sought from the juvenile court. However, to establish the dependency declaration is bona fide, and thereby warranting USCIS’ consent, the dependency declaration should also provide for child welfare services, and/or other recognized protective or remedial relief. 8 C.F.R. § 204.11(d)(5)(ii)(B); see also 6 USCIS Policy Manual, *supra*, at J.2(C)(1) (explaining, as guidance, that a juvenile court’s determination of dependency generally means the child is subject to the court’s jurisdiction because allegations of parental maltreatment were sustained by the evidence and were legally sufficient to support state intervention on behalf of the child); *id.* at J.2(D) (explaining, as guidance, that the relief provided or recognized by the juvenile court may include dependency on the court for the provision of child welfare services, and/or other court-ordered or recognized protective or remedial relief). The Court acknowledged that the Petitioner was abandoned by his parents in Honduras and that he was under the care of a family friend in the United States, but made no further determinations or provisions for intervention, protective or remedial relief, from the state of Texas.

The Petitioner further asserts that there may be an immigration motive when individuals seek juvenile court orders, but we should rely on the documentation provided to decide if the Petitioner meets all the requirements for SIJ classification. USCIS recognizes that petitioners may have an immigration motive for seeking a juvenile court order. See 6 USCIS Policy Manual, *supra*, at J.2(D) (explaining,

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<sup>2</sup> To the extent the Petitioner refers to other non-precedent decisions, such decisions are not published as a precedent and therefore do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c) (providing that precedential decisions are “binding on all [USCIS] employees in the administration of the Act”). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. However, the Petitioner has not identified the cases that he believes are similar and we therefore have no means to compare or distinguish these cases.

as guidance, that while there may be some immigration motivation for seeking a juvenile court order, it did not necessarily reflect that the request for SIJ classification was not bona fide). However, as discussed, in determining whether consent is warranted, petitioners must 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. 8 C.F.R. § 204.11(b)(5). Our review here shows the Court's order did not grant relief from parental maltreatment.

The Petitioner has not presented new facts establishing his eligibility for SIJ classification. Further, the Petitioner has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3). Therefore, he has not established eligibility for the benefit sought.

ORDER:       The motion to reopen is dismissed.

FURTHER ORDER:       The motion to reconsider is dismissed.