



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

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

In Re: 25965845

Date: APR. 06, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ). See Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the National Benefits Center denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not establish he warrants U.S. Citizenship and Immigration Services (USCIS)' consent. We dismissed the Petitioner's appeal and a combined motion to reopen and to reconsider. The matter is now before us on a second motion to reopen. 8 C.F.R. § 103.5(a)(2).

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will grant the motion to reopen and sustain the appeal.

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).

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), (c)(1). 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).

SIJ classification may only be granted upon the consent of USCIS after the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act; 8 C.F.R. § 204.11(b)(5). For USCIS' consent, the petitioner must establish 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. 8 C.F.R. § 204.11(b)(5).

II. ANALYSIS

In [] 2018, when the Petitioner was 19 years old, the [] Probate and Family Court in Massachusetts (Court) issued an order finding: the Petitioner is not married, the Court has jurisdiction pursuant to Massachusetts General Laws Annotated (Mass. Gen. Laws Ann.), chapter 215, section 6, reunification with the Petitioner's father is not viable due to a history of neglect and abandonment and it is not in the Petitioner's best interest to return to Peru. In response to a request for evidence by the Director, the Petitioner submitted an amended order issued nunc pro tunc to 2018, which provided the Court had jurisdiction pursuant to Mass. Gen. Laws Ann. chapter 119, section 39M. The Court provided that based on a hearing, the Petitioner's sworn affidavit, a memorandum of law and other evidence, it found the Petitioner was neglected, citing to title 110 of the Code of Massachusetts Regulations section 2.00, and abandoned, citing to Mass. Gen. Laws Ann., chapter 210, section 3, and provided details in support of its determinations. The Court further determined, citing to Massachusetts case law, that having considered the health, educational, developmental, physical, and emotional interests of the Petitioner, it was not in his best interest to return to Peru, and described factors the Court considered. The Director denied the SIJ petition, determining the Petitioner established that he was dependent on the court, but because the Court did not provide some relief to protect from parental abuse, abandonment, neglect, or a similar basis under state law, he had not met his burden to establish USCIS' consent was warranted. On appeal, we concluded that the language of the Court's order did not grant the Petitioner any relief or refer him for any child welfare services under state law and, as a result, the Petitioner had not established that he sought the amended order to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. We therefore dismissed the appeal concluding that USCIS' consent was not warranted. We also dismissed the Petitioner's combined motion to reopen and to reconsider. In our decision, we addressed the Petitioner's arguments on motion and concluded he had not presented new evidence or established that our decision on appeal was based on an incorrect application of law or USCIS policy or that it was incorrect based on the evidence in the record at the time of the decision.

With his motion to reopen, the Petitioner submits a [] 2022 order (second amended order) issued nunc pro tunc to [] 2020, when the amended order was issued. In the second amended order, the Court refers the Petitioner to probation for medical, mental health, occupational, and educational resources, citing Mass. Gen. Laws Ann. chapter 119, section 39M. The Court further provides that it has the authority to make decisions concerning the protection, well-being, care, and custody of a child and that its findings were made due to the neglect and abandonment by the

Petitioner's father and to provide the Petitioner any further protections necessary under Massachusetts law.

The Petitioner's motion to reopen establishes that USCIS' consent is warranted. To demonstrate a bona fide request for SIJ classification, a petitioner must establish 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). For USCIS to consent, petitioners must also establish the juvenile court order or supplemental evidence includes the factual basis for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5)(i).

Both the amended order and the second amended order cite to Massachusetts state law for its jurisdiction, declare the Petitioner dependent on the court, and include the juvenile court's determinations that reunification with the Petitioner's father is not viable due to abandonment and neglect and that it is not in the Petitioner's best interest to return to Peru. See 8 C.F.R. § 204.11(d) (providing the evidentiary requirements for USCIS consent). Both orders provide a factual basis for the parental reunification and best interest determinations. The second amended order refers the Petitioner to probation for medical, mental health, occupational, and educational resources. The Court further specifies that the second amended order was made due to the neglect and abandonment of the Petitioner's father and to provide the Petitioner any further protections necessary under Massachusetts law. Accordingly, the second amended order overcomes our prior determination and establishes, by a preponderance of the evidence, that a primary reason the Petitioner sought the juvenile court orders was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that he was granted such relief. Consequently, the Petitioner has demonstrated that he is eligible for and merits USCIS' consent to his request for SIJ classification.

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