



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

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

In Re: 25747687

Date: APR. 17, 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 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). 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), determining the Petitioner had not established his eligibility because the juvenile court orders, serving as the basis for the SIJ petition, did not contain a qualifying parental reunification determination. We dismissed the Petitioner's appeal. The matter is now before us as a combined motion to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2)-(3).

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 dismiss the motion.

I. LAW

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).

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 Petitioners seeking SIJ classification must establish

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).

that reunification with one or both of their parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. The juvenile court must have made a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law. 8 C.F.R. § 204.11(c)(2).

II. ANALYSIS

We herein incorporate the relevant facts and procedural history discussed in our decision on appeal and highlight the below facts for our analysis of the instant motion. In [] 2018, the [] County Juvenile and Domestic Relations District Court for the Commonwealth of Virginia (court) entered a temporary order (order) placing the Petitioner in the custody of his grandparents, citing to Virginia Code Annotated (Va. Code Ann.) section 16.1-278.5, titled “Children in need of supervision” and 278.4, titled “Children in need of services.” (2018) In [] 2018, the court issued an order for custody (amended order) finding that on the date of the order, the Petitioner was “without parental care and guardianship” and it had jurisdiction to grant custody pursuant to Va. Code Ann. section 16.1-241(A)(2), amending its finding of jurisdiction under Va. Code Ann. sections 16.1-278.4-5. Va. Code Ann. section 16.1-241(A)(2) describes the court’s jurisdiction over the custody, visitation, support, control, or disposition of a child “[w]ho is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship.” (2018). The remainder of the court’s findings in the amended order were as follows:

The court further finds that special circumstances existed to award custody to the grandparents . . . because [the Petitioner] was sent to this country from El Salvador by his mother, and that four days before his eighteenth birthday it was not feasible, practical, nor in his best interest to order that he return to El Salvador. [The Petitioner] is now eighteen years of age, therefore, no further proceedings in this matter are needed and the case is ended.

In our decision dismissing the appeal, we reviewed Va. Code Ann. section 16.1-241(A)(2) and acknowledged that it gives the court jurisdiction over a child without parental care and guardianship for abandonment, absence, or incapacity. However, we explained that the court did not specify the basis of its jurisdiction, i.e., abandonment, absence, or incapacity. We concluded that the court’s citation to Va. Code Ann. section 16.1-241(A)(2) was not a judicial determination that the Petitioner is unable to reunify with one or both parents due to abuse, abandonment, neglect, or a similar basis under state law. We also concluded that while the Petitioner’s underlying petition to the juvenile court contains assertions concerning his inability to reunify with his parents due to abuse, abandonment, neglect, or a similar basis under state law, such claims do not constitute judicial determinations.

On motion the Petitioner asserts that there is no requirement that a court must write out its reunification determination in the order, citing to section 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11(a), (c). The regulation at 8 C.F.R. § 204.11(a) defines a judicial determination as “a conclusion of law made by a juvenile court.” The regulation at 8 C.F.R. § 204.11(c)(ii) provides, in relevant part, that “the juvenile court must have made a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under State law.” However, these are two subsections of many pertaining to SIJ classification and the application of section

101(a)(27)(J) of the Act. Missing from the Petitioner's argument is 8 C.F.R. § 204.11(b)(4), which provides that a petitioner is eligible for SIJ classification as described in section 101(a)(27)(J) of the Act if subject to a juvenile court order(s) that meets the requirements under paragraph (c) of 8 C.F.R. § 204.11. In other words, the SIJ regulations do require a juvenile court's order to contain a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law, which agency guidance further clarifies. See generally 6 USCIS Policy Manual J.2(C), <https://www.uscis.gov/policymanual> (explaining, as guidance, to be eligible for SIJ classification, the petitioner must submit a juvenile court order with a parental reunification determination, which "declares, under state law, that the petitioner cannot reunify with one or both of the petitioner's parents due to abuse, neglect, abandonment, or a similar basis under state law"); id. at J.3(A)(1) (explaining, as guidance, "[t]he juvenile court order(s) must provide the required judicial determinations regarding dependency or custody, parental reunification, and best interests.") The Petitioner has not provided precedent decisions or other legal authority establishing that we erred in our application of the regulations.

Rather, the Petitioner further asserts that USCIS guidance only requires the record to establish a judicial determination was made, and that a judicial determination does not need to be included in the order. The Petitioner quotes USCIS Policy Memorandum PM-602-0175.1, Matter of D-Y-S-C-, Adopted Decision 2019-02, 5 (Oct. 11, 2019), <http://www.uscis.gov/legal-resources/policy-memoranda> as follows: "the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law." The Petitioner interprets this sentence to require "the record" to establish a judicial determination was made on maltreatment by one or both parents under state law. However, the issues discussed in this USCIS Policy Memorandum include whether a judicial determination contained in the court's orders was made under state law, and after reviewing the court orders and the record, it was concluded that the requisite determination was made under state law. However, in the instant case, a judicial determination on parental reunification was not contained in the order. The Petitioner similarly quotes from the section on "Qualifying Juvenile Court Determinations" contained in the USCIS Policy Manual:

This requirement may be met if the order(s) cite those state law(s), or if the petitioner submits supplemental evidence which could include, for example, a copy of the petition with state law citations, excerpts from relevant state statutes considered by the state court prior to issuing the order, or briefs or legal arguments submitted to the court.

The Petitioner, however, does not include the preceding sentence, which cites to 8 C.F.R. § 204.11(c)(3) and provides, "[t]he order(s) should use language establishing that the specific judicial determinations were made under state law." 6 USCIS Policy Manual, *supra*, at J.3(A)(1). Here again, USCIS policy guides adjudicators to review the record for supplemental evidence that a judicial determination contained in the juvenile order was made pursuant to state law. Contrary to the Petitioner's assertions, the Policy Manual does not guide adjudicators to look to the supplemental evidence for a judicial determination when a determination on parental reunification is not contained in the order. This interpretation of agency guidance would conflict with the guiding regulations, as discussed above, which require the juvenile court order to have a judicial determination that parental

reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under State law. 8 C.F.R. § 204.11(b)(4), (c)(3).

The Petitioner has not presented new facts or other documentary evidence establishing his eligibility for SIJ classification. 8 C.F.R. § 103.5(a)(2). 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).² Therefore, the Petitioner has not established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

² The Petitioner also includes arguments on motion that he warrants USCIS consent. We need not address these arguments as the Petitioner must first establish his eligibility for SIJ classification, which he has not done, before we analyze whether USCIS consent is warranted. See 8 C.F.R. § 204.11(b)(5) (providing SIJ classification may only be granted upon the consent of USCIS after the petitioner meets all other eligibility criteria).