



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

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

In Re: 21122754

DATE: Feb. 1, 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) 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 New York District Office (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed his appeal. We also dismissed the Petitioner's first motions to reopen and reconsider. He now files second combined motions to reopen and reconsider, reasserting his eligibility. Upon review, we will grant the motion to reopen and sustain the appeal. The motion to reconsider therefore will be dismissed as moot.

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 show that our prior 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

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).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. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

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 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). 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). Petitioners bear the burden of proof to establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In [] 2015, when the Petitioner was 20 years old, the New York Family Court for [] (Family Court) appointed guardianship of the Petitioner to G-S-S-², finding that the appointment shall last until his 21st birthday. In a separate order (SIJ order), the court determined, among other findings necessary for SIJ eligibility under the Act, that the Petitioner was dependent upon the court or has been placed in the custody of a state agency or department or an appointed individual or entity. The Family Court also determined that the Petitioner’s reunification with “one or both of his parents is not viable due to neglect; abandonment; and/or abuse” and that it was not in his best interest to be returned to India, his country of nationality.

Based on the Family Court orders, the Petitioner filed his petition in May 2015. The Director denied the SIJ petition, concluding that the record evidence did not establish that the SIJ order was issued by a juvenile court. The Director also determined that the SIJ order lacked qualifying parental reunification and best interest determinations, and that the Petitioner did not demonstrate that his request for SIJ classification warranted USCIS’ consent.

On appeal, we withdrew the Director’s determination that the Petitioner did not establish that the Family Court exercised jurisdiction over him as a juvenile when the court issued the SIJ order. We nonetheless dismissed the appeal because the court’s parental reunification determination did not specify the Petitioner’s parent(s) or provide a state law basis and he did not demonstrate that his SIJ petition warranted USCIS’ consent. Subsequently, we dismissed the Petitioner’s first motions to reopen and reconsider, noting that he provided no new arguments or evidence.

On his combined motions here, the Petitioner reasserts his eligibility for SIJ classification. In support of the motions, he submits a [] 2020 amended order (first amended order) and a [] 2022 *nunc pro tunc* order (second amended order) issued by the Family Court. Upon further review of the record and the Petitioner’s arguments, he has overcome the grounds for denial of his SIJ petition.

The Act requires a juvenile court’s determination that SIJ petitioners cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. *See* section 101(a)(27)(J)(i) of the Act. This parental reunification determination must be made under state law.

² We use initials for privacy.

See id.; *see also* 8 C.F.R. § 204.11(c)(1). The Petitioner bears the burden to demonstrate that he has met this requirement. *See Matter of Chawathe*, 25 I&N Dec. at 375.

On motion, the Petitioner has overcome our prior determination that the SIJ order lacked a qualifying parental reunification determination. As noted above, 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). The Family Court's [] 2022 amended order, submitted to us during the pendency of the instant motion to reopen, references the first amended order and further retroactively clarifies the original SIJ order. The court's amended orders consistently clarify the original parental reunification finding and specifically provide the determination, based on the underlying documents referenced in the amended orders, that the Petitioner's reunification with his father is not viable due to the father's neglect and abuse, and cited applicable state legal authority. 8 C.F.R. § 204.11(b)(5), (c)(1)(ii). Accordingly, the Petitioner has shown that the court made a qualifying parental reunification determination under section 101(a)(27)(J)(i) of the Act based on the new evidence, warranting reopening of the matter.³

Moreover, the Petitioner has shown consent is warranted in this case because he sought and obtained a form of protective or remedial relief from parental maltreatment, as evidenced by the court-ordered guardianship. The record shows that the Family Court here determined under state legal authority that the Petitioner's father abused and neglected him and specifically appointed him a guardian, and the Petitioner thus has established that he sought and obtained protective relief from his father's maltreatment. 8 C.F.R. § 204.11(d)(5)(ii) (stating that to warrant USCIS' consent, the court order or supplemental evidence must demonstrate that the court granted or recognized protective or remedial relief from parental maltreatment).

Further, the record shows that the court made the requisite SIJ related findings regarding juvenile dependency and/or custody, parental reunification, and best interest and establishes a factual basis for the court's determinations. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5), (d)(5)(i). The second amended order specifically states that the court examined various underlying documents such as “motions papers,” “supporting affidavits,” “pleadings,” and “hearing testimony,” “in inquiring into the facts and circumstances of the case” and in determining that the Petitioner's reunification with his father is not viable due to severe physical abuse and emotional neglect under applicable state law. The Petitioner has also shown that a primary reason he sought the court orders was to obtain relief from parental maltreatment, and that he was granted such relief under applicable state law, as evidenced by the guardianship order. The record thus demonstrates that the Petitioner's request for SIJ classification merits USCIS' consent, and he has overcome the Director's and our prior determinations to the contrary. The record otherwise shows that he meets the remaining eligibility criteria and his request for SIJ classification warrants USCIS' consent. 8 C.F.R. §§ 204.11(b), (d). Therefore, the Petitioner has established his eligibility for SIJ classification under the Act.

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

³ The Petitioner asserts that he submitted the first amended order to us when he filed his prior combined motions. He further asserts that when we dismissed the earlier motions, we failed to acknowledge or consider the first amended order, which he contends overcame our previous determinations on appeal even without the second amended order, such that we should also sustain the instant motion to reconsider. However, given our resolution of the matter based on the Petitioner's motion to reopen, we do not reach the merits of the other motion. *See, e.g., INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that courts and agencies are not required to address issues that are unnecessary to the results they reach).