



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

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

In Re: 23052106

Date: FEB. 2, 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 National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). We dismissed the Petitioner's appeal, and the matter is now before us on a combined motion to reopen and reconsider. Upon review, we will grant the motion 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). 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).¹ 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 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.

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).

SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security, through USCIS, when the petitioner meets all other eligibility criteria and establishes that the juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit. 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 [] 2019, when the Petitioner was 16 years old, the [] Family Court in New York (family court) issued an order appointing the Petitioner’s aunt, N-A-,² as her guardian. In [] 2019, the family court issued an *ORDER – SPECIAL FINDINGS*, (SIJ order) in which it determined, among other findings, that Petitioner’s reunification with her mother, S-A-, is not viable due to abandonment under New York law, “because this child was abandoned at the age of two years old and left at a boarding school with poor living conditions.” Further, the family court concluded that it was not in the Petitioner’s best interest to return to the Republic of Ghana, her country of nationality. Based on the family court’s orders, the Petitioner filed her SIJ petition in November 2019.

The Director issued a notice of intent to deny (NOID), concluding that USCIS’ consent was not warranted because the record contained material inconsistencies. The Director highlighted that the Petitioner’s claims in support of her SIJ petition that reunification with her mother was not viable due to her abandonment at the age of two years conflicted with information relating to the Petitioner’s applications for B1/B2 nonimmigrant visas. Specifically, the Director indicated that when the Petitioner appeared for interviews with the U.S. Department of State (DOS) relating to her visa applications, her mother was present at the interviews and the Petitioner expressed an intention to travel with her mother. The Director also noted that the records indicate that the Petitioner “had additional travel with [her] mother.”

In response, the Petitioner stated that her maternal aunt, M-A-, not her biological mother, accompanied her during her visa interviews and travel to the United States. The Petitioner submitted a personal statement, two statements from her maternal aunt, M-A-, and a statement from another maternal aunt, N-A-, explaining that the Petitioner lived and traveled with M-A-. The Petitioner also stated that, “In Ghana, it’s the norm to call your mother’s sister ‘Mom’ if they take care of you or if you see them as a parental figure.” The statements from M-A-, specified that she cared for the Petitioner and traveled with her on several occasions to the Netherlands and the United States. Additionally, M-A- stated that the Petitioner “addresses [her] as ‘mother’ even up till today.” The statement from N-A-, detailed that the Petitioner has in the past lived and traveled with M-A- and explained that “[i]n Ghana, your mother’s sister can be referred to as your mother, whereas your father’s sister addressed as your Aunty based on the matrilineal lineage [*sic*]. It is very common among the [] to address one as a senior/junior mother . . .” The Petitioner submitted an article describing the [] Family System, in relevant part, that “the brothers of your mother are your uncles and her sisters are your mothers. .

² We use initials to protect identities.

.. In the paternal side, all the sisters of your father are your aunts and his brothers are your fathers.” The Petitioner also submitted a copy of her birth certificate listing S-A- as her biological mother; documentation showing that M-A- purchased an airline ticket for the Petitioner in August 2018; and copies of the Petitioner’s visas and stamps in her passport. The Director found this evidence to be insufficient to clarify the inconsistencies and denied the petition based on a determination that the Petitioner had not met her burden of showing that USCIS’ consent is warranted.

On appeal, the Petitioner provided the following additional evidence: a letter indicating that the Petitioner sought a DNA parentage test regarding her relationship with M-A- and that the results were pending; a copy of the identification page of her mother’s passport; her mother’s U.S. arrival and departure history with the result of “[n]o record found for traveler”; copies of the Petitioner’s passports showing her U.S. visas and admission stamps; and copies of arrival and departure stamps she claimed are from M-A-’s passport. The Petitioner argued that she submitted sufficient evidence to show that M-A- accompanied her during her visa interviews and travel, and that USCIS should consent to her SIJ classification; however, we dismissed the Petitioner’s appeal.

On motion, the Petitioner submits DNA parentage test results excluding M-A- as her biological mother, the U.S. arrival and departure history for M-A-, and previously submitted copies of the arrival and departure stamps from M-A-’s passport. She reasserts that she has submitted sufficient evidence to show that M-A- accompanied her during her visa interviews and travel, and that USCIS should consent to her SIJ classification.

B. USCIS’ Consent is Warranted

To warrant USCIS’ consent, petitioners must establish that the juvenile court order or supplemental evidence include the factual basis for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, juveniles must establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; 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 id.*; *see also 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 purpose” of a request for SIJ findings). Furthermore, USCIS may 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).

Upon review, the Petitioner has established that USCIS’ consent to her request for SIJ classification is warranted. On appeal we previously determined that the copies of the arrival and departure stamps submitted did not clearly indicate they were from M-A-’s passport and therefore did not show that M-A-, not the Petitioner’s mother, traveled with the Petitioner. The copies of the stamps resubmitted on motion contain legible identifying information linking them to M-A- and correspond with the previously submitted arrival and departure stamps in the Petitioner’s passport. Considering the documents and the statements of the Petitioner and M-A-, the Petitioner has provided documentation

sufficient to show that she previously traveled with M-A- and to refute the information in the record that she traveled with her mother.

Additionally, the Petitioner has provided a reasonable explanation for the inconsistency indicating that her mother accompanied her during her B1/B2 nonimmigrant visa interview. The Petitioner asserts that M-A-, not S-A-, accompanied her at the interview. The Petitioner and both her maternal aunts explained in previously submitted statements that the Petitioner refers to M-A- as her mother for cultural reasons, which is supported by the article about [redacted] Family System. On the Petitioner's visa application, M-A- is listed in the "Travel Companion" section, as the "Preparer of Application," and as the "Person/Entity Paying for Your Trip" further supporting the Petitioner's claim that M-A- accompanied her to the nonimmigrant visa interview due to the Petitioner traveling with M-A-. In her statement, M-A- declared that she "always clarified being her mother when asked in time of our traveling and moreover [she] ha[s] a letter [of] written permission signed by [the Petitioner's biological parents]."

Based on the foregoing, the Petitioner has demonstrated, by a preponderance of the evidence, that a primary reason she sought the requisite juvenile court or administrative determinations was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, such that her request for SIJ classification was bona fide. The Petitioner therefore has established, by a preponderance of the evidence, that USCIS' consent to her request for this classification is warranted, as section 101(a)(27)(J)(i)-(iii) of the Act requires.

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