



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

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

In Re: 24993842

Date: JAN. 23, 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), and we dismissed the Petitioner's subsequent appeal. The matter is now before us on a combined motion to reopen and motion to reconsider. Upon review, we will dismiss the motions.

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.

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).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect

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).

application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As discussed in our prior decisions, incorporated here by reference, the [] Family Court in New York issued an order appointing guardians for the Petitioner in proceedings brought under section 661 of the New York Family Court Act and section 1707 of the New York Surrogate's Court Procedure Act. In a separate *ORDER-Special Findings* (SIJ order), the Family Court determined, among other findings related to SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was "dependent upon the Family Court having been placed in a guardianship by this Court." Additionally, the Family Court found the Petitioner's reunification with his parents was not viable due to abandonment or a similar basis under New York State law and that it would not be in his best interest to be removed from the United States and returned to Spain or Ecuador. In our decision on the Petitioner's appeal, we concluded that the Petitioner had not established by a preponderance of the evidence that 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, as required under 8 C.F.R. § 204.11(b).

On motion, the Petitioner reasserts his eligibility for SIJ classification and makes a claim of ineffective assistance against his prior counsel. When asserting claims of ineffective assistance of counsel, noncitizens must generally submit: 1) written affidavits providing detailed descriptions of the actions that counsels agreed to take, the specific actions they took, and any representations they made about their actions; 2) evidence that applicants informed counsels of the allegations of ineffective assistance and gave them opportunities to respond; and 3) evidence that applicants filed complaints against counsels with appropriate disciplinary authorities or explanations for why complaints were not filed. *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Applicants asserting ineffective assistance must also show that, but for counsels' deficiencies, the applicants would have prevailed on their claims. *Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020). The Board of Immigration Appeals (BIA) established these evidentiary requirements to deter meritless claims and ensure that adjudicators have sufficient information to evaluate allegations of ineffective assistance. *Matter of Lozada*, 19 I&N Dec. at 639.

The Petitioner explains that a formal complaint with the disciplinary authority against his prior counsel was not pursued, because "counsel proffered an affidavit admitting fault." Contrary to this characterization, prior counsel does not admit ineffective assistance and explains that an amended SIJ order was not obtained "due to the pandemic and subsequent shutdown of all non-essential business." Thus, the Petitioner is not excused from filing a complaint against his prior counsel and has not complied with all the requirements to establish a claim of ineffective assistance of prior counsel.

Even if we found that the Petitioner had met the requirements for asserting a claim of ineffective assistance, the Petitioner does not submit new evidence on motion to establish his eligibility for SIJ classification. Although he asserts that his prior counsel failed to petition the Family Court for an amended SIJ order sufficient to establish eligibility for SIJ classification, there is no evidence that he has since done so or that the Family Court has issued such an order. The Petitioner's personal statement dated September 2022 does not provide new information. Other evidence submitted on motion, specifically a statement from guardian [] dated March 2020, a "Certificate" authored

by a psychologist in Ecuador, and a “Court Ordered Investigation” authored by the Administration for Children’s Services, was previously addressed on appeal.

Additionally, the Petitioner has not established that our decision dismissing his appeal was based on an incorrect application of law or policy. 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).

As the Petitioner has not established on motion that his request for SIJ classification merits USCIS' consent, he is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.