



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

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

In Re: 24805676

DATE: Jan. 26, 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 his subsequent combined motion to reopen and reconsider. The Petitioner now submits a second combined motion to reopen and reconsider. Upon review, the Petitioner has not satisfied the motion requirements, and we will therefore dismiss the motions.

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

The Director denied the SIJ petition, concluding that the Petitioner did not demonstrate that the Texas District Court for [REDACTED] (District Court), which issued court orders containing judicial determinations related to establishing the Petitioner’s SIJ eligibility, had made a qualifying declaration of dependency or custodial placement under applicable state child welfare law, as required under section 101(a)(27)(J)(i) of the Act.

In our previous decision on appeal, incorporated here by reference, we discerned no error in the Director’s determination and dismissed the Petitioner’s appeal on the same basis.² As we explained, although the two court orders in the record included a dependency determination by the District Court, neither the orders nor the underlying documents established that the District Court made the dependency determination under state child welfare law governing such determinations, as required. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1)(i).³ We later dismissed the Petitioner’s subsequent motion to reopen because he did not establish new facts based on evidence that would warrant reopening of the matter. Specifically, we determined that the Petitioner’s only new documentary evidence submitted with the previous motion to reopen—his then pending District Court motion seeking another order clarifying the court’s earlier SIJ orders—did not establish a basis for reopening, as he did not submit evidence indicating that the court had granted the motion and issued the requested clarifying order.⁴ We also dismissed the Petitioner’s concurrent motion to reconsider

² The record reflects that the Petitioner last entered the United States in November 2013, rather than January 1999 as noted in our previous decisions – a harmless error that did not impact our analysis or the outcome in those decisions.

³ Although not raised by the Director or in our prior decisions, the record also indicates that the Petitioner has not established that his request for SIJ classification otherwise merits USCIS consent, as the District Court orders and the underlying documents in the record from the District Court proceedings do not show that the court granted him protective or remedial relief from parental maltreatment. See section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5), (d)(5)(ii) (stating that to demonstrate that USCIS’ consent is warranted, petitioners must establish that a primary reason the SIJ related determinations were sought was to obtain relief from parental maltreatment, and further, the juvenile court order or supplemental evidence must demonstrate the relief from parental maltreatment that the court granted or recognized). In any future filings in these SIJ proceedings, the Petitioner must also establish that he satisfies this requirement as well as the remaining SIJ eligibility criteria.

⁴ The Petitioner filed his prior combined motions with us in May 2021, requesting “additional 90 days” to submit the signed clarifying order. He provided a filing receipt for the then pending District Court motion titled “ORDER ON MOTION FOR CLARIFICATION,” indicating that it was filed with the court in April 2021. When we dismissed the Petitioner’s previous motions over a year later in August 2022, he still had not submitted the promised clarifying order.

because it did not meet the requirements for that motion where he did not establish any error in our prior decision on appeal.

With the instant motion to reopen and reconsider, the Petitioner submits a brief that is nearly identical to the one that he submitted with his previous combined motion. He again requests “time” to obtain a clarifying court order and urges us not to adjudicate the instant motions until we receive it. However, the Petitioner does not advance any new arguments, specify how we erred in our previous decisions, or provide new facts or evidence on motion that establish his SIJ eligibility. The Petitioner submits a copy of a duplicate (and still pending) motion for clarification he refiled with the District Court in September 2022, in order to obtain a new clarifying order to establish SIJ eligibility. However, as of the date of this decision, the record does not include the requested clarifying order from the court. The remaining documents are duplicate copies of previously submitted documents, including the two SIJ orders and the 2016 transcript of the court’s declaratory judgment. Considering the foregoing, the Petitioner has not met the requirements for a motion to reopen. He also has not satisfied the requirements for a motion to reconsider as he does not assert that we incorrectly applied relevant policy or law and has not demonstrated that our previous decision was incorrect based on the evidence before us at the time. 8 C.F.R. § 103.5(a)(2), (3). Accordingly, the motion to reopen and reconsider is dismissed, and the SIJ petition will remain denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.