



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

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

In Re: 22359091

Date: JAN. 26, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of Guatemala, 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petitioner) petition. We dismissed the Petitioner's appeal of that decision. The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motions.

I. LAW

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

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 the Department of Homeland Security (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 demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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).

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

II. ANALYSIS

The record indicates that the Petitioner entered the United States in February 2017, when he was 17 years old. In [] 2018, when the Petitioner was 18 years old, E-G-L-V-² the Petitioner's uncle, filed a *Petition for Appointment of Guardian a Minor Child* (guardianship petition) in the County Court for the County of [] Nebraska (county court) seeking guardianship of the Petitioner. In his petition, E-G-L-V- stated that the Petitioner traveled to the United States without his parents, who resided in Guatemala and were unable to join him. He further stated that the guardianship was necessary to provide continuing care and supervision of the Petitioner, and that the Petitioner's best interest and welfare would be served by the requested guardianship. The court subsequently granted E-G-L-V-'s petition, determining that "the welfare and best interests of [the Petitioner] require[d] the appointment of a [guardian]." The court further determined that "the biological parents of [the Petitioner] ha[d] abandoned [him] in the United States." In June 2018, the Petitioner filed a petition for SIJ classification based on this order.

The Director denied the SIJ petition, explaining that, in order to establish SIJ classification, petitioners must submit a juvenile court order containing dependency, parental reunification and best interest determinations— determinations which were not contained in the Petitioner's court order. We dismissed the Petitioner's subsequent appeal. We determined that his court order contained a qualifying dependency determination as the court placed him under E-G-L-V-'s guardianship. However, we found that the court order lacked a qualifying parental reunification determination because the court did not find that reunification was not viable due the Petitioner's parent's abandonment, and the court order and underlying guardianship petition did not indicate the state law basis for the court's abandonment finding. We also found that the court order did not contain a determination that it was not in the Petitioner's best interest to return to Guatemala. We noted that the underlying petition to the court, which states that the Petitioner's parents "are incapacitated as they are outside the United States and unable to return," also did not address whether it would be in the Petitioner's best interest to return to Guatemala.

On motion, the Petitioner submits a certified transcript of the guardianship hearing, previously submitted court orders and declarations from himself and E-G-L-V-. The transcript of the guardianship hearing indicates that the Petitioner's parents resided in Guatemala and consented to the appointment of E-G-L-V- as his guardian, but there is no finding of parental abandonment under state law referenced during the hearing. The transcript further indicates that during the guardianship hearing, the court did not address whether it would be in the Petitioner's best interest to return to Guatemala.

² Initials are used to protect the individual's privacy.

As stated above, SIJ classification requires juvenile court determinations that reunification with one or both parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” and that it would not be in the petitioner’s best interest to be returned to his or his parent’s country of nationality. Sections 101(a)(27)(J)(i) and (ii) of the Act. Here, the Petitioner has not established on motion that the county court made a qualifying parental reunification or best interest determination, as required for SIJ classification.

It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. As Petitioner has not met that burden on motion, he is therefore ineligible for SIJ classification.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.