



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

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

In Re: 25295828

Date: JAN. 30, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) because the Petitioner did not establish he was under the age of 21 at the time he filed his SIJ petition. We subsequently dismissed an appeal of that decision. The matter is now before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner asserts that the record establishes his eligibility for SIJ classification, and he contends we erred in our contrary determination. Upon review, we will dismiss both motions.

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 establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigrations Services (USCIS) 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. Additionally, a review of any motion is limited to the bases supporting the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Thus, we examine any new facts and arguments to the extent that they pertain to our dismissal of the Petitioner's prior appeal.

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 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).

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).

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).

On motion, the Petitioner contends we should reopen and reconsider our prior decision “given the once-in-a-century nature of the extraordinary circumstances that led to the late receipt of the [SIJ petition],” specifically the COVID-19 pandemic and the delays in state court proceedings resulting from pandemic-related closures. On appeal, we considered the Petitioner’s evidence concerning the impact of the pandemic in causing delays in the issuance of the SIJ order by the Superior Court of California for the [REDACTED] (Superior Court). The Petitioner does not reference any new facts to be proved nor does he present any additional documentary evidence on motion. As such, the motion does not meet the requirements of a motion to reopen, as set out in regulations. 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen must be dismissed.

We also find that the Petitioner has not identified an incorrect application of law or policy that rendered our prior decision incorrect at the time it was issued. The Petitioner argues we must reconsider the decision to deny the SIJ petition based on the Petitioner’s age at the time of filing and asserts that the petition should be accepted as timely. The Petitioner cites *Matter of O. Vasquez*, 25 I&N Dec. 817 (BIA 2012), to support the assertion that the SIJ petition may be deemed, in an exercise of the Director’s discretion, timely. We previously addressed why the holding of that case, which involves an application for adjustment of status, is not controlling in the Petitioner’s case. The age requirement for SIJ filing must be met at the time of filing, a requirement that we cannot set aside. Section 101(a)(27)(J) of the Act proscribes a firm age requirement, setting clear boundaries on eligibility and inherently prohibiting inclusion of those who do not meet the requirement. The statute also specifically identifies the time at which the age requirement must be determined. *See* Section 235(d)(6) of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (2008) (stating that an SIJ petitioner may not be denied SIJ status based on age if they were a child on the date on which they “applied for” such status). *See also* 8 C.F.R. §§ 103.2(b)(1) (providing that a petitioner for an immigration benefit “must establish that he or she is eligible for the requested benefit at the time of filing”) and 204.11(b)(1) (stating that an SIJ petitioner must be “under 21 years of age at the time of filing”).

The Petitioner further alleges the Director’s determination that USCIS’ consent was not warranted where the SIJ petition was not bona fide was in error, based on prior regulations, and that determination should “be re-examined in light of the clarifications provided by the final rule.”² . However, as noted in our prior decision, the Petitioner did not establish he met all other eligibility requirements for SIJ classification, specifically the requirement that he be under 21 years of age at the time of filing; therefore, we did not address the issue of consent, and our dismissal of the Petitioner’s appeal was not based on any failure to establish the SIJ petition was bona fide. *See* Section 101(a)(27)(J)(i)-(iii) of the Act; 8 C.F.R. § 204.11(b)(5).

² The Petitioner cites the final rule, effective April 7, 2022, that the Department issued to amend the 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).

As the Petitioner has not established our prior decision was based on an incorrect application of law or policy and does not reference any new facts to be proved nor present any additional documentary evidence on motion, he has not satisfied the requirements of a motion to reopen or motion to reconsider. Therefore, we dismiss the Petitioner's motion, and his SIJ petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.