



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

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

In Re: 25690646

Date: Jan. 31, 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 as well as her subsequent motions to reopen and reconsider. The Petitioner now submits combined motions to reopen and reconsider. Upon review, we will grant the motion to reopen and sustain the appeal. The motion to reconsider therefore will be dismissed as moot.

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

In [REDACTED] 2017, when the Petitioner was 18 years old, the New York Family Court for [REDACTED] (Family Court), issued a “Special Immigrant Juvenile Status” order (SIJ order), determining, among other findings necessary for SIJ eligibility, that she was dependent upon the court, that the Petitioner’s reunification with both her parents is not viable due to abandonment, and that it was not in her best interest to be returned to El Salvador, her country of nationality.

Based on the SIJ order, the Petitioner filed her SIJ petition in July 2017. The Director denied the petition, concluding that the record did not establish that the SIJ order was issued by a juvenile court and that the SIJ order lacked a qualifying parental reunification. On appeal, we withdrew the Director’s determination that the Petitioner did not establish that the Family Court exercised jurisdiction over her as a juvenile when the court issued the SIJ order. We nonetheless dismissed the appeal, following a request for evidence, because the court’s parental reunification determination did not specify a state law basis and the Petitioner did not establish that she sought and obtained relief from parental maltreatment under state law from the Family Court such that her request for SIJ classification warranted USCIS’ consent. The Petitioner then filed her previous motions to reopen and reconsider, which we dismissed as untimely.

On the instant motions, the Petitioner continues to seek reopening of the matter, and she reasserts her SIJ eligibility and maintains that her request for SIJ classification warrants USCIS’ consent.

Upon review of the Petitioner’s explanations and new supporting evidence she provided with the instant motion to reopen, she has now shown that the delay in filing the prior motion to reopen was reasonable and beyond her control, such that reopening is warranted. *See* 8 C.F.R. § 103.5(a)(1)(i). We therefore now address the Petitioner’s substantive arguments and new evidence provided with her previous and current motions regarding her eligibility for SIJ classification.

As stated, SIJ classification may only be granted upon USCIS’ consent, when a petitioner meets all other eligibility criteria and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). To show a bona fide request, a petitioner must establish 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. 8 C.F.R. § 204.11(b). To establish that USCIS’ consent is warranted, the juvenile court order or supplemental evidence must include the

factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). Such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS may withhold consent. 8 C.F.R. § 204.11(b)(5).

Upon further review of the record evidence and the Petitioner's arguments, she has overcome the grounds for denial of her SIJ petition. The Family Court determined in its initial [] 2017 SIJ order that the Petitioner's reunification with both her parents is not viable due to abandonment "under New York law," and thus provided a qualifying parental reunification determination under state law. In support of her previous and current motions with us, the Petitioner also submitted a [] 2021 *nunc pro tunc* order (amended SIJ order), which further clarifies that the court's initial parental reunification determination was based on state law and cites specific state legal authority. Therefore, the Petitioner has shown that the court provided a qualifying parental reunification determination under state law, as required under the Act, and we withdraw our previous determination to the contrary.

Moreover, the Petitioner has demonstrated that she sought and obtained a form of protective or remedial relief from parental maltreatment, as she provided a separate guardianship order issued by the Family Court appointing her a guardian on the same date as the SIJ order. The court's amended SIJ order further clarifies the guardianship appointment. The record shows that the court here determined under state legal authority that the Petitioner's both parents abandoned her and specifically appointed her a guardian, and the Petitioner therefore has established that she sought and obtained protective relief from her parents' abandonment. The record also contains the underlying affidavits presented to the court, consistently indicating why the Petitioner and her guardian sought the court orders.² See 8 C.F.R. § 204.11(d)(5)(ii) (stating that in determining whether USCIS' consent is warranted, the juvenile court order or supplemental evidence must show the relief from parental maltreatment that the court granted or recognized). Accordingly, the Petitioner has overcome our previous determination to the contrary.

The record shows that the Family Court made the requisite SIJ related determinations regarding juvenile dependency and/or custody, parental reunification, and best interest and establishes a factual basis for the court's determinations. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5), (d)(5)(i). The Petitioner has also established that a primary reason she sought the court orders was to obtain relief from parental maltreatment under state law, and that she was granted such relief under applicable state law, as evidenced by the court-ordered guardianship. As the record otherwise shows that she meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS' consent, the Petitioner has established her eligibility for SIJ petition under the Act.³

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

² Although the Petitioner submitted the guardianship order, the amended SIJ order, and the underlying court documents to us during the pendency of her previous motion to reopen, as stated, we dismissed the earlier motion as untimely without reaching the substantive arguments and evidence on that motion.

³ Given our resolution of the instant motion to reopen, we do not reach the merits of the Petitioner's motion to reconsider.