



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

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

In Re: 26480799

Date: JUL. 31, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner seeks classification as a special immigrant juvenile (SIJ). See 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). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the National Benefits Center denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), determining the Petitioner had not established her eligibility because the juvenile court order, serving as the basis for the SIJ petition, did not contain qualifying parental reunification and best interest determinations. We dismissed the appeal. The matter is now before us as a combined motion to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2)-(3).<sup>1</sup> On motion, the Petitioner submits new documents, including an amended family court order. The Petitioner asserts that within these documents are new facts establishing eligibility.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

## **I. LAW**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility

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<sup>1</sup> A motion to reconsider must establish 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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. Although the Petitioner selected the checkbox on the Form I-290B, Notice of Appeal or Motion, indicating she is filing a combined motion, the Petitioner does not contest the correctness of our prior decision and limits her arguments to the motion to reopen. Since the Petitioner's motion brief does not meet the requirements of a motion to reconsider, the motion must be dismissed. 8 C.F.R. § 103.5(a)(3).

for the requested benefit. See *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

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). SIJ classification may only be granted upon U.S. Citizenship and Immigration Services (USCIS)' consent after a petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act; 8 C.F.R. § 204.11(b)(5). For USCIS' consent, the petitioner must establish 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. 8 C.F.R. § 204.11(b)(5). USCIS may 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. *Id.*

## II. ANALYSIS

In July 2017 the Petitioner entered the United States with her parents on a visitor's visa. In a prior benefit application filed with USCIS in May 2018 the applicant provided her address (current address) and this address has not changed in subsequent filings. In [REDACTED] 2020, when the Petitioner was 17 years old, an Illinois State Circuit Court (court) issued a guardianship order, appointing the Petitioner's mother as her sole guardian. In March 2020, based on the court's order, the Petitioner filed her SIJ petition. Filed in support of her SIJ petition was an affidavit by her father dated February 2020. The affidavit stated, in relevant part, he was residing for at least six months at another address in [REDACTED] Illinois, and has "not ha[d] any contact with the minors since August 2019, when [he] left [the] familial residence, nor ha[s] [he] attempted to make any contact with them." Also filed with the SIJ petition was an August 2020 affidavit by the Petitioner's mother stating "my husband abandoned me and my children in August of 2019. [ ] [H]e left our family residence and has not returned since that time. [ ] [M]y husband has not provided any financial, emotional, or physical support for my children since he left in 2019." The Petitioner's mother further states, "I have been the sole provider of material, emotional, educational, and financial support to the children since August of 2019." The Petitioner also included the court transcript for the February 2020 proceedings. In the transcript, the Petitioner's mother was sworn in and attested to her husband not living with the Petitioner, that he left in August 2019, had not provided any financial or emotional support, and has not had contact with her or her children. In response to the court's question whether the Petitioner's father had abandoned her and his children, the Petitioner's mother answered in the affirmative.

During removal proceedings before the Executive Office of Immigration Review (EOIR), commenced in October 2019, the Petitioner's father listed his address as the Petitioner's current address and USCIS has no record of him changing his address during proceedings, which terminated in September 2021. In January 2021, the Petitioner's U.S. citizen sibling filed a Form I-130, Petition for Alien Relative (Form I-130), for her father, which was approved in July 2021. The Petitioner's father's address was listed as the Petitioner's current address on the Form I-130. In the concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application), the Petitioner's father listed his address as the Petitioner's current address. Pursuant to the Form G-28, Notice of Entry of Appearance as

Attorney or Accredited Representative, filed with the Form I-130 and similarly filed with the adjustment application, the Petitioner's father was represented at the time by the Petitioner's current attorney. Further, government records of other forms filed by the Petitioner's father and information gathered through government databases independently corroborate that the Petitioner's father has resided and resides at the Petitioner's current address.<sup>2</sup>

On motion, the Petitioner's brief states, in relevant part: "The judge originally assigned to this case was not familiar with the Special Immigrant Juvenile statutes and policy and therefore erred as a matter of law in failing to make findings consistent with the law." The Petitioner submits an amended order by the court curing the deficiencies noted in the Director's denial and in our appeal decision. However, the amended order relied on the Petitioner's father's affidavit in finding she was neglected and abandoned pursuant to Illinois state law, stating, in relevant part: "Reunification with the respondent father is not viable due to neglect and abandonment based on the father's sworn statement[.]" We issued a NOID, acknowledging that the amended order rectified the deficiencies noted in the Director's decision and our decision on appeal, but explaining that USCIS consent is not warranted in light of the inconsistencies with the Petitioner's father's affidavit and his contemporaneous and after-filed benefit requests indicating he continued to reside with the Petitioner. See 8 C.F.R. § 204.11(b)(5) (USCIS may 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.)

In response to the NOID, the Petitioner submits a brief asserting that USCIS is questioning the experience of the court to make guardianship determinations and that "there is absolutely no basis to question the findings of the [redacted] court." The Petitioner, in her motion brief, acknowledges that the court did not make the necessary parental reunification determination but, in response to the NOID, asserts USCIS should not question the court's determinations. USCIS guidance advises against using our consent authority to reweigh the evidence considered by the juvenile court. See generally 6 USCIS Policy Manual J.2(D), <https://www.uscis.gov/policymanual>. However, SIJ classification may only be granted upon USCIS consent, section 101(a)(27)(J) of the Act, and USCIS may withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification. 8 C.F.R. § 204.11(b)(5). Here, we do not question the court's experience in making guardianship decisions or seek to reweigh the evidence, but rather seek more information regarding the Petitioner's claim of abandonment in light of the material inconsistencies in the record directly relevant to the court's

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<sup>2</sup> In response to the NOID, the Petitioner asserts that the fact that her sister filed for their father is completely irrelevant to this case because one child's relationship with a parent is different from another child's. As explained in the NOID and in this decision, we reference the filing of the Form I-130 because it was filed after the Petitioner claimed abandonment by her father and it lists the Petitioner's current address as her father's address. USCIS is required to advise a petitioner of derogatory information considered in its determination and offer the petitioner an opportunity to rebut. See 8 C.F.R. § 103.2(b)(16)(i). The Petitioner also asserts that she has been denied the opportunity to rebut "any" derogatory information that the government "allegedly has" and cites to 8 C.F.R. § 103.2(b)(16), stating that USCIS must provide "all derogatory information." By providing examples in the NOID of the Petitioner's father's filings with USCIS, evidencing his address as her current address, we have met the regulatory requirement of advising the Petitioner of inconsistencies in the record. See *Hassan v. Chertoff*, 593 F.3d 785, 787 (9th Cir. 2010) (concluding 8 C.F.R. § 103.2(b)(16)(i) only requires the government to make a petitioner "aware" of the derogatory information used against him or her); *Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) (explaining that 8 C.F.R. § 103.2(b)(16)(i) does not require USCIS to exhaustively list all information found and that the notice of intent to deny gave plaintiffs sufficient notice and opportunity to respond to derogatory information).

parental reunification determination. See generally 6 USCIS Policy Manual J.3(B) (explaining, as guidance, if there is significant contradictory information in the file that the juvenile court was likely not aware of or may impact whether a reasonable factual basis exists for the court's determinations, officers may request additional evidence from the petitioner).

The Petitioner submitted a copy of her mother's tax filings from 2021 and 2022 to show that her mother filed independently of her father. However, the taxes do not evidence that the Petitioner's father is not and was not living with her and otherwise continuing to play a role in her life. Rather, the taxes raise an additional discrepancy into the record. The Petitioner's mother attested, in her affidavit dated August 2020 and addressed to the court, that she was the Petitioner's sole financial provider. While her 2020 taxes were not provided, we note that the Petitioner is not listed as a dependent on either her mother's 2021 or 2022 tax filings.

The Petitioner asserts that the adjustment application referenced in the NOID does not raise an inconsistency because it was not adjudicated by USCIS and the Petitioner's father orally testified to the truthfulness of his adjustment application filed with EOIR, which evidences him living at a different address than Petitioner. The Petitioner submits a copy of her father's adjustment application, stamped received by EOIR on August 25, 2021. As discussed above, the Petitioner's father, while represented by the Petitioner's current attorney, filed an adjustment application, receipt number [REDACTED] with USCIS in January 2021. The adjustment application identified the Petitioner's father's current address as that of the Petitioner's and that he resided there from February 2018 to present. The Petitioner's father signed the adjustment application certifying, under penalty of perjury, that all of the information in his application is complete, true, and correct. While the adjustment application was administratively closed in July 2021 as being in EOIR's jurisdiction, the Petitioner's father still attested to the truthfulness of the information contained therein. We note the Petitioner's father was also represented by the Petitioner's current attorney in his EOIR proceedings. It is concerning that the Petitioner's father attested to residing at different addresses to the EOIR and USCIS. Further, in March 2022, the Petitioner's father filed a second adjustment application with USCIS, receipt number [REDACTED] which was approved and lists his current address as the Petitioner's current address.

The petitioner further asserts that her father's failure to update EOIR with his current address should not be held against her, that she has no relationship with her father, and that USCIS's request for proof of where her father resides is unduly burdensome. Nevertheless, she states she was able to obtain a letter from the city of [REDACTED] showing that her father's chauffeur's license is registered to his claimed address. As discussed above, the Petitioner's father has filed many applications using her current address with USCIS. Further, the Petitioner and her father share the same attorney, who prepared and filed forms representing to EOIR and USCIS that the Petitioner's father resides at Petitioner's current address. The Petitioner's attorney also concedes that the Petitioner's father did not update EOIR with a current address by filing "EOIR 33," its change of address form. It is the Petitioner's burden to establish by a preponderance of the evidence that she meets the requirements for SIJ status. See *Matter of Chawathe*, 25 I&N Dec. at 375. The letter from the city of [REDACTED] dated April 2023, without more, does not cure the material inconsistencies regarding the Petitioner's father's address. There is no evidence in the record, including that submitted on motion, indicating that the court was aware of these inconsistencies. Instead, the court specifically stated that it relied on the Petitioner's father's affidavit, which attested to not having any contact with the Petitioner or her minor siblings since leaving the family

residence in August 2019, in coming to its parental reunification determination. The Petitioner's response does not cure the material inconsistencies raised in the NOID and does not establish eligibility for the benefit sought.

### III. CONCLUSION

The Petitioner's response to the NOID does not cure the material inconsistencies contained in the record and does not establish that a primary reason the Petitioner sought the required juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, as required under 8 C.F.R. § 204.11(b)(5). As a result, she has not established that her request for SIJ classification is bona fide, warranting USCIS' consent.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.