



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

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

In Re: 26211782

Date: JUNE 1, 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) 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). SIJ classification protects noncitizen children in the United States who cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. The Director of the National Benefits Center (Director) denied the Petitioner's SIJ petition, and we dismissed his appeal. He now files a motion to reconsider. Upon review, we will dismiss the motion.

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.

As noted in our previous decision, incorporated here by reference, days before the Petitioner turned 21 years old in [redacted] 2016, the New York Family Court for [redacted] (Family Court) appointed guardianship of the Petitioner to G-K-<sup>1</sup> until the Petitioner's twenty-first birthday. The court also issued a separate SIJ order, which formed the basis for the Petitioner's request for SIJ classification. The SIJ order included the court's determination, among other SIJ eligibility findings, that the Petitioner's reunification with one or both of his parents was not viable due to their "neglect" and that it was not in his best interest to be returned to India, his country of nationality. In support of its parental reunification determination, the Family Court found that when the Petitioner was a child, his parents "used excessive corporal punishment against [him] and tried to prevent him from attending school."

In our prior appeal decision, we determined, as did the Director, that the record contained evidence that materially conflicts with the Petitioner's claim of parental neglect on which the Family Court relied in making its parental reunification determination. We dismissed the Petitioner's appeal because the unresolved, material inconsistencies indicated that his request for SIJ classification was not bona fide and did not warrant U.S. Citizenship and Immigration Services' (USCIS') consent. 8 C.F.R. § 204.11(b)(5).

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<sup>1</sup> We use initials to protect individuals' privacy.

In our decision, we carefully reviewed the evidence the Petitioner submitted in support of his SIJ petition before the Director and to us on appeal, including his various school records from India and statements from the Petitioner, his attorney, a school official and a teacher, as well as other individuals. We also considered the Petitioner's appeal argument that the record contains no apparent inconsistencies. However, contrary to this assertion, we noted material inconsistencies in the record, including those arising from his statements during his July 2015 asylum interview and the Family Court's determination that he could not reunify with his parents due to parental neglect and related factual findings. Specifically, the Petitioner's statement under oath during his asylum interview that he attended an expensive private school for 15 years from age 2 to until he left India at age 17 and that his parents paid for his school materially conflicted with the court's finding that his parents neglected him in part because they tried to prevent him from attending school, as well as with his assertions in his SIJ proceedings that his father forced him to work their farm instead. We also determined that the Petitioner's additional explanations on appeal for some of the inconsistencies further conflicted with his asylum interview statements under oath. For instance, his assertions that although he attended school, he was often absent from school and that his parents only allowed him to attend school twice a week contradict his sworn asylum testimony that he *regularly* attended school six days a week up to nine hours a day, followed by afterschool projects and homework, and that his parents paid for him to attend the private school for 15 years. Similarly, his claim in his SIJ proceedings that his father beat him and forced him to work on the family farm, rather than allowing him to attend school, contradict his asylum interview statements that he only went to the farm a few times a year and that his parents hired low-wage laborers to work the farm. We also noted that in response to the asylum officer's inquiry as to why he went to his parents' farm, the Petitioner explained he wanted to take a walk on the farm and made no mention of ever working there. We therefore determined that the record contained material conflicts relating the court's parental reunification finding based on the Petitioner's claim of parental neglect and he consequently did not demonstrate that his request for SIJ classification was bona fide and warranted USCIS' consent.

The Petitioner on motion has not shown that we incorrectly applied law or policy in dismissing his appeal or that our decision was incorrect based on the evidence then before us. On motion, he submits no additional evidence and instead maintains, as he did on appeal, that there are no material inconsistencies in the record and that our decision was arbitrary and capricious. However, we fully considered this argument, and apart from this general assertion, he does not explain or address the specific inconsistencies raised in our prior decision. The Petitioner also argues that even assuming that there are material inconsistencies in the record as to his claim before the Family Court that his parents tried to stop him from attending school and forced him to work on the family farm, there is no evidence that materially conflicts with the Family Court's determination that he also cannot reunify with his parents in part due to their use of excessive corporal punishment, which he notes constitutes "neglect" under New York law. However, as the Petitioner concedes, the Family Court, in finding parental neglect, also specifically found that the Petitioner's parents tried to prevent him from attending school, but the Petitioner's own sworn testimony at his asylum interview directly contradicts this factual finding by the Family Court. Apart from generally asserting that there is no contradiction in his statements, the Petitioner does not address the material inconsistencies between the Petitioner's asylum testimony and the Court's findings arising from his assertions in his guardianship proceedings. Additionally, although the Petitioner references his testimony and motion papers he provided to the Family Court for the court's SIJ-related findings, which he asserts should not be second-guessed by going behind the SIJ order and reweighing the underlying evidence of parental neglect based on

excessive corporal punishment to which his parents subjected him, he does not submit any of the referenced documents before the court in support of the court's SIJ related findings or to otherwise support his claim here that his assertions to the court and at his asylum interview were not materially inconsistent. As stated, the Petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence, including that his request for SIJ classification is bona fide and merits USCIS' consent. Here, he has not done so in light of the material, unresolved inconsistencies in the record relating to his SIJ related findings.

Accordingly, the Petitioner on motion has not demonstrated error in law or policy in our previous decision or otherwise established that our decision was incorrect based on the record at the time, such that reconsideration would be warranted. 8 C.F.R. § 103.5(a)(3).

**ORDER:** The motion to reconsider is dismissed.