



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

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

In Re: 26662971

Date: JUNE 13, 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 petition, finding that “due to the lack of supporting factual basis for the non-viability of reunification and the best interest determinations, USCIS cannot consent to the grant of special immigrant juvenile status.” The Director further stated that it “appears that the SIJ benefit has been sought primarily for the purposes of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.” In our most recent decision, we dismissed the Petitioner’s combined motion to reopen and reconsider, concluding that the Petitioner remained ineligible for special immigrant juvenile (SIJ) classification. With the instant motion to reopen and reconsider, the Petitioner again asserts he is an R.F.M. class member and seeks review in accordance with the Amended Judgment. 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 combined motion.

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

In our most recent decision to dismiss the Petitioner’s combined motion to reopen and reconsider, we determined that the Petitioner did not meet the criteria for review under the Amended Judgment entered on [REDACTED] 2019, by the United States District Court for the [REDACTED] of New York in *R.F.M. v. Nielsen*, 18 Civ. 5068.¹ Specifically, we concluded that the Petitioner’s underlying SIJ

¹ In *R.F.M. v. Nielsen*, the district court determined that USCIS erroneously denied plaintiffs’ SIJ petitions based on USCIS’ determination that New York Family Courts lacked jurisdiction over the custody of individuals who were over 18 years of age. 365 F. Supp. 3d 350, 377-80 (S.D.N.Y. 2019). Because the plain language of the Act requires either a dependency declaration or a custodial placement and the New York Family Court guardianship orders rendered the plaintiffs dependent

petition was not denied on the ground that the New York Family Court is not a juvenile court under 8 C.F.R. § 204.11(a) and/or that the Family Court lacks the jurisdiction and authority to issue SFOs for juvenile immigrants between their 18th and 21st birthdays under section 101(a)((27)(J) of the Act. Rather, the Director specifically acknowledged the Family Court of the State of New York that issued the SIJ order as the “juvenile court” and went on to conclude that the request for SIJ classification did not merit USCIS’ consent because the Petitioner had not established that his primary purpose in seeking the juvenile court order was to obtain relief from abuse, abandonment, neglect, or a similar basis under state law.

With the instant combined motion to reopen and reconsider, the Petitioner again asserts that he is an R.F.M. class member and seeks review in accordance with the Amended Judgment. He maintains that it is “irrelevant that USCIS denied the petition on several other grounds” and “the denials in this case are tinted by the fact that the applicant was over 18 years old and the ability and competence of the New York family Court to issue the SIJ order.” As we previously detailed, the Director specifically acknowledged the Family Court of the State of New York that issued the SIJ order as the “juvenile court” and went on to conclude that the request for SIJ classification did not merit USCIS’ consent because the Petitioner had not established that his primary purpose in seeking the juvenile court order was to obtain relief from abuse, abandonment, neglect, or a similar basis under state law. The record does not establish that the SIJ petition was denied solely or in part on the ground that the New York Family Court is not a juvenile court under 8 C.F.R. § 204.11(a) and/or that the Family Court lacks the jurisdiction and authority to issue Special Findings Orders for juvenile immigrants between their 18th and 21st birthdays under section 101(a)((27)(J) of the Act).

The Petitioner’s contentions in the current motion merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (“a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision”). We will not re-adjudicate the petition anew and, therefore, the Petitioner remains ineligible for special immigrant juvenile (SIJ) classification.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

upon the family court, the district court held that USCIS exceeded its statutory authority in requiring New York Family Courts to nonetheless have jurisdiction over a juvenile’s custody in order to qualify as juvenile courts under the SIJ provisions of section 101(a)(27)(J) of the Act. *Id.* The district court also found that guardianships issued under FCA section 661 were judicial determinations about the custody and care of juveniles, pursuant to the definition of juvenile court at 8 C.F.R. § 204.11(a). *Id.* at 378. The district court held that USCIS erroneously required that the New York Family Court have authority to order the return of a juvenile to the custody of the parent(s) who abused, neglected, abandoned, or subjected the juvenile to similar maltreatment in order to determine that the juvenile’s reunification with the parent(s) was not viable pursuant to section 101(a)(27)(J)(i) of the Act. *Id.* at 378-80.