



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

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

In Re: 26638144

Date: JUNE 13, 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, concluding that the Petitioner did not establish that he warranted consent of U.S. Citizenship and Immigration Services (USCIS). We dismissed his appeal. The matter is now before us on combined motions to reopen and reconsider.

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 motions.

**I. LAW**

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.

**II. ANALYSIS**

The Petitioner, whose claimed date of birth is in [REDACTED] 1994, entered the United States in September 2013. As noted in our previous decision, incorporated here by reference, the New York Family Court for [REDACTED] (Family Court) appointed guardianship of the Petitioner to R-S-<sup>1</sup> in 2015, while the Petitioner was still under the age of 21 years. The Family Court also issued a separate SIJ order, which formed the basis for the Petitioner's request for SIJ classification. The SIJ order included the Family Court's determination, among other SIJ eligibility findings, that the Petitioner's

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

reunification with one or both of his parents was not viable because the Petitioner “was abandoned by his father from ages 6-17 years” (approximately 2000 to 2011), during which time the Petitioner was the only source of income for himself and his mother. Further, in determining that reunification was not viable, the Family Court stated that the Petitioner’s father returned to the family home when the Petitioner was 17 years old and physically abused him. Finally, the Family Court determined that it was not in the Petitioner’s best interest to be removed from the United States and returned to India.

In our appellate decision, incorporated here by reference, we concluded that the record contains evidence that materially conflicts with the Petitioner’s claims of parental abandonment and abuse on which the Family Court relied in making its parental reunification determination. Most notably, in his 2015 Memorandum of Law to the Family Court, the Petitioner claimed that his father abandoned the family when the Petitioner was six years old (approximately 2000), returned to the family in January 2012, and severely beat the Petitioner in July 2012. The Petitioner also stated to the Family Court that he left the family home in January 2013, traveled to Delhi, and then departed India in April 2013. However, the Petitioner claimed to USCIS in a 2016 interview that his father returned to the family home in April 2013, on the same day that the Petitioner departed India. Based on this and other contradictions in the evidence that we discussed in our appellate decision, 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 USCIS’ consent. 8 C.F.R. § 204.11(b)(5).

On motion, the Petitioner submits a brief but does not assert that there are new facts supported by documentary evidence that establish eligibility, as required to meet the requirements of a motion to reopen. Instead, in his motion brief, the Petitioner contests the correctness of our prior decision, claiming that we did not provide appropriate deference to the Family Court’s findings in the SIJ orders in accordance with our April 2022 regulations.<sup>2</sup> As discussed in our appellate decision, USCIS’ consent function is limited to determining whether there are reasonable factual bases for the court’s parental reunification and best interest determinations, whether relief from parental maltreatment was granted or recognized, and whether the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5) (stating that for USCIS to consent to a request for SIJ classification, the request “must be 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”); *see also* 6 *USCIS Policy Manual* J.2(D) (providing, as guidance, that the exercise of the consent function involves looking “to the juvenile court’s determination, the factual bases supporting those determinations, and the relief provided or recognized by the juvenile court.”) We do not go behind a court order to reevaluate the court determinations of abuse, neglect, abandonment, or a similar basis properly made under state law. *See* 87 Fed. Reg. 13066, 13086 (Mar. 8, 2022) (“USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law.”); *see also* 6 *USCIS Policy Manual*, *supra*, at J.2(D) (“USCIS relies on the expertise of the juvenile court in making child welfare determinations and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law.”). However, the Petitioner does not cite to any law, regulation, or precedent decision to show that USCIS deference in adjudication of SIJ petitions extends

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<sup>2</sup> 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).

beyond that which we give to a juvenile court in making its determinations in accordance with state law such that we also are *required* to consent to the grant of SIJ classification and ignore contradictory evidence simply because a petitioner has obtained SIJ orders. Indeed, and critically, 8 C.F.R. § 204.11(b)(5) itself provides that “USCIS may withhold consent if evidence materially conflicts with the eligibility requirements . . . such that record reflects that the request for SIJ classification was not bona fide.” *See also* 6 *USCIS Policy Manual*, *supra*, at J.2(D) (“USCIS may . . . withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification.”). On motion, the Petitioner contends only that we must give deference to the SIJ order in exercising consent but does not address the material inconsistencies we raised in our prior decision.

The Petitioner also argues that even assuming that there are material inconsistencies in the record as to some of his factual claims before the Family Court, there is no evidence that materially conflicts with the Family Court’s specific determination that he cannot reunify with his parents in part due to his father’s abandonment under New York law. As discussed, we do not second guess the Family Court’s conclusions; however, we have the authority to consider whether the Petitioner’s SIJ petition is bona fide in considering whether to consent to SIJ classification. *See id.* Moreover, as discussed in our appellate decision, and documented in the record, the Family Court based its decision on the Petitioner’s statement and specific claim that his father abandoned the family when the Petitioner was six years old (approximately 2000), returned to the family in January 2012, and subjected the Petitioner to abuse until the Petitioner left the family home in January 2013. Apart from asserting that there is no contradiction in his statements, the Petitioner does not address the material inconsistencies between his 2016 interview testimony to USCIS that his father abandoned the family “until April 2013,” and the Family Court’s 2015 findings of abandonment and abuse based on the claim that his father returned in January 2012, or the other inconsistencies we discussed in our appellate decision. 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. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Here, he has not done so in light of the material, unresolved inconsistencies in the record regarding the factual bases for the Family Court’s SIJ determinations.

### III. CONCLUSION

The Petitioner’s filing does not meet the requirements of a motion to reopen. Moreover, the Petitioner on motion has not demonstrated any 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 reopen is dismissed.

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