



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26031896

Date: MAY 25, 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). See Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 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 San Antonio, Texas Field Office denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not establish the court, which issued the order serving as the basis for the SIJ petition, had jurisdiction over him as a juvenile. We dismissed the Petitioner's appeal. The Petitioner subsequently filed four combined motions to reopen and to reconsider. We dismissed the first as untimely, the second on the merits, and the third we rejected. The fourth combined motion to reopen and to reconsider is now before us. 8 C.F.R. § 103.5(a)(2)-(3).

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 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 state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

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. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

SIJ classification may only be granted upon the consent of U.S. Citizenship and Immigration Services (USCIS) after the 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). Petitioners must also establish the juvenile court order or supplemental evidence includes the factual basis for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5)(i).

II. ANALYSIS

A. Relevant Procedural History and Background

In [] 2015, when the Petitioner was 18 years old, the district court in [] County, Texas issued an order in "Suit Affecting Parent-Child Relationship" (SAPCR) and found: the Petitioner was under the age of 21 and unmarried; the Petitioner was subjected to parental abandonment and neglect by his mother and father as defined under Texas law; reunification with the Petitioner's mother is not viable due to neglect and/or abandonment; the Petitioner is unable to reunify with his father because he is deceased; it is not in the Petitioner's best interest to return to Honduras; and the Petitioner had been declared dependent on the court and placed under the shared custody of an individual appointed by the court. The court ordered the Petitioner's mother to pay child support. On the basis of this SAPCR order, the Petitioner filed for SIJ classification in November 2015. The Director denied the petition. The basis of the denial was the Petitioner had reached 18 years prior to obtaining the SAPCR order and had not established the order was issued by a juvenile court making a care and custody determination of a juvenile. However, the Director also explained that USCIS issued a request for evidence (RFE) seeking evidence that the state court order was issued by a juvenile court making a care and custody determination of a juvenile and evidence providing a reasonable factual basis for the state court dependency order. According to the Director, the Petitioner's counsel responded with a letter stating an affidavit from the individual awarded child support was attached and that she described the basis of seeking the dependency order. However, no affidavit was attached.

We issued a decision on the appeal in March 2017 and concluded that the SAPCR order lacked a qualifying dependency declaration or custody determination. While the SAPCR order referenced a shared custody order, it was not included in the record. We also concluded that USCIS consent was

¹ The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. See Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

not warranted because the record contained no factual findings regarding: the abandonment and neglect of the Petitioner's mother; the court's best interest determination; the circumstances of Petitioner's father's unfortunate death or how his passing or other actions constituted abandonment and neglect under Texas law. We explained we may consider, for example, the underlying petition for dependency or custody, any supporting documents submitted to the juvenile court, affidavits summarizing such evidence, or affidavits and records consistent with the court's findings but the Petitioner had not submitted such supplemental evidence.

In our January 2018 decision dismissing the Petitioner's second combined motion to reopen and to reconsider, we concluded the Petitioner's prior combined motion was properly dismissed as being untimely but we also concluded that we did not err in dismissing on the ground that the Petitioner had not established the SAPCR order was issued by a juvenile court making a care and custody determination of a juvenile. As this issue was dispositive of the motion, we did not further analyze consent.

Filed with the prior motions were two amended SAPCR orders dated March and April 2017. The April SAPCR order specified, in relevant part, that the court "asserted jurisdiction over [the Petitioner] as a 'child' as defined by Tex. Fam. Code § 101.003(b)" and the Petitioner was dependent on the court "under Texas Family Code 154.001(a)(I) and 154.002." The April SAPCR order also stated:

At the time of the original SAPCR proceeding, the child was enrolled in a program leading toward a high school diploma and in compliance under Chapter 25, Education Code, which established the basis for dependency for the support and care of the child . . . this Court ordered child support be paid in order to provide relief to the child . . . from parental abandonment or neglect[.]

In the instant combined motion, the Petitioner asserts USCIS policy has changed since the Director denied the SIJ petition, explaining that USCIS has since acknowledged the validity of Texas SAPCR orders for children over the age of 18 for SIJ purposes. He further asserts that the SAPCR order and relevant supporting documents establish that the state juvenile court issued an order of dependency to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law.

B. The Court Made a Qualifying Declaration of Dependency

The Petitioner has established that the Court made a qualifying declaration of dependency. The record reflects that the court declared the Petitioner dependent upon it under sections 154.001(a) and 154.002 of the Texas Family Code (Tex. Fam. Code). The court further determined: the Petitioner was a child within the meaning of section 101.003 of the Tex. Fam. Code and was enrolled in a program leading towards a high school diploma. Moreover, the Court ordered the Petitioner's mother to pay child support to provide relief to the Petitioner as protection from parental abandonment. Considering the foregoing, the Petitioner has established that the Court made a qualifying custody or dependency determination pursuant to 8 C.F.R. § 204.11(c)(1)(i)(A). We withdraw the Director's determination otherwise.

C. USCIS Consent is not Warranted

The Petitioner has established that the Court, by ordering child support, provided relief from parental abuse, abandonment, neglect, or a similar basis under state law, as section 8 C.F.R. § 204.11(d)(5)(ii) require.

However, the Petitioner asserts that he submitted an affidavit to the court during the dependency proceedings, and this affidavit combined with the SAPCR order and 2017 amended orders establish a reasonable factual basis for the court's determinations, which was to protect the Petitioner from parental neglect and abandonment. The record does not support the Petitioner's assertion. The Director explained that the supporting affidavit referenced by counsel in his response to the RFE was not included in the record. On appeal, we further explained that the Petitioner could provide the underlying petition for dependency or custody, any supporting documents submitted to the juvenile court, affidavits summarizing such evidence, or affidavits and records consistent with the court's findings to establish the factual basis for the parental reunification and best interest determinations. However, in the motions filed by the Petitioner, this evidence was not provided. As a result, he has not established he warrants USCIS consent under 8 C.F.R. § 204.11(b)(5) or that we erred in our analysis below concluding he had not established the factual basis for the court's qualifying parental reunification and best interest determinations, as required under 8 C.F.R. § 204.11(d)(5)(i).

The Petitioner has not presented new facts or other documentary evidence establishing USCIS consent is warranted and is thereby ineligible for SIJ classification. 8 C.F.R. § 103.5(a)(2). Further, the Petitioner has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy with respect to the granting of USCIS consent and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision with respect to consent, as required under 8 C.F.R. § 103.5(a)(3). Therefore, the Petitioner has not established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.