



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

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

In Re: 26180593

Date: MAY 25, 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). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed a subsequent appeal and two combined motions to reopen and reconsider. The matter is now before us on a third combined motion to reopen and reconsider. On motion, the Petitioner asserts that he is eligible for SIJ classification. Upon de novo 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 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. *Id.* at § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

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) of the Act; 8 C.F.R. § 204.11(b).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. 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).

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other

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).

eligibility criteria and establishes 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. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5). Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

We incorporate our prior decisions by reference and will repeat only certain facts as necessary here. In [] 2017, [] Massachusetts Probate and Family Court (Family Court) issued an order entitled DECREE AND ORDER FOR DECLARATORY RELIEF AND SPECIAL FINDINGS (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was dependent on the Family Court. The Family Court further found that the Petitioner’s reunification with parents was not viable due to abuse, neglect, and abandonment and that it was not in his best interest to be removed from the United States and returned to Guatemala, his country of nationality. In [] 2020, the Family Court issued an amended order entitled AMENDED JUDGEMENT AND DECREE OF SPECIAL FINDINGS OF FACT AND RULINGS OF LAW (amended order). The amended order stated, in pertinent part, that the Petitioner “is declared dependent upon this court and this court appoints his aunt, [M-D-],² to continue providing protection and care,” and “has shown for purposes of SIJ status eligibility, that he experienced abuse, neglect, or abandonment by one of both parents, it follows that the child is on [sic] the Probate and Family Court for the opportunity to obtain relief.” In dismissing the Petitioner’s appeal and subsequent two combined motions to reopen and reconsider, we found that the Petitioner did not establish that the Family Court provided him with any actual protective or remedial relief pursuant to Massachusetts child protection provisions or any other Massachusetts law, apart from findings enabling him to file an SIJ petition with USCIS.

On motion, the Petitioner contends that we erred in finding that the court did not provide relief from his parents’ abuse, neglect, and abandonment through some form of placement, supervision, services or other relief in connection with the finding of dependency. The Petitioner argues, through counsel, that the Family Court provided relief by placing him in the custody of his aunt. Now, in support of his motion, the Petitioner submits a brief and an updated amended order issued nunc pro tunc entitled FURTHER AMENDED SPECIAL FINDINGS OF FACT AND RULINGS OF LAW (second amended order).

To establish the dependency declaration is *bona fide*, and thereby warranting USCIS’ consent, the dependency declaration should also provide for child welfare services, and/or other recognized protective or remedial relief. 8 C.F.R. § 204.11(d)(5)(ii)(B); *see also* 6 USCIS Policy Manual, *supra*, at J.2(C)(1) (explaining, as guidance, that a juvenile court’s determination of dependency generally means the child is subject to the court’s jurisdiction because allegations of parental maltreatment were sustained by the evidence and were legally sufficient to support state intervention on behalf of the child); *id.* at J.2(D) (explaining, as guidance, that the relief provided or recognized by the juvenile court may include dependency on the court for the provision of child welfare services, and/or other court-ordered or recognized protective or remedial relief). Here, the Family Court acknowledged that the Petitioner was abused and neglected by his parents in Guatemala and that he was in the custody of

² We use initials to protect the privacy of individuals.

his aunt in the United States, but made no further determinations or provisions for intervention, protective or remedial relief, from the state of Massachusetts.

As we noted in our prior decision, the record does not establish that the Family Court formally placed the Petitioner in the physical or legal custody of his aunt. Instead, in the amended order, the Family Court stated that it appointed the Petitioner's aunt to "continue providing protection and care." The second amended order finds that "it is in [the Petitioner's] best interest to live in the custody of his biological aunt, [M-D-], who is providing him with the necessities of daily living..." and that "it is in his best interest to remain with his aunt." The amended order and second amended order do not place the Petitioner in his aunt's custody, rather the orders acknowledge that the Petitioner was already in the custody of his aunt. Moreover, the Petitioner's brief states, "[t]here was no need for the court to order a custodial placement, supervision or services in connection with the finding of dependency because [he] was seeking an order of dependency on the court based on the abuse, abandonment and neglect she [sic] suffered from his parents while already under the guardianship and care of his aunt. The court determined that custodial placement, supervision or services was not necessary nor was it in [his] best interest and therefore did not order those forms of relief in this case." The Petitioner's statements about being cared for by his aunt and the Family Court's determination that no further intervention was necessary do not support the Petitioner's assertions that the Family Court's order provided relief from parental abuse, neglect, abandonment, or a similar basis under state law.

The Petitioner has not presented new facts establishing his eligibility for SIJ classification. 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 and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3). Therefore, he has not established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.