



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

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

In Re: 13039982

Date: October 13, 2021

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 (Director) denied the Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), and we dismissed the Petitioner's appeal. The matter is now before us on a motion to reopen and reconsider. Upon review, we will dismiss the joint motion.

I. LAW

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 the petitioner 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(c). Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioners 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).

SIJ classification may only be granted upon the consent of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act; *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 2, 6-7 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy).

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. 8 C.F.R. § 103.5(a)(3). 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).

II. ANALYSIS

In our prior decision, incorporated here by reference, we determined that due to the retroactive application of Massachusetts General Laws, chapter 119, section 39(M) (section 39M), the Petitioner, a native and citizen of Guatemala, had established that the [redacted] Probate and Family Court of Massachusetts acted as a “juvenile court” within the meaning of section 101(a)(27)(J) of the Act when it issued the 2017 *Decree and Order for Declaratory Relief and Special Findings* (SIJ order). Nonetheless, we concluded that the Petitioner had not established his eligibility for SIJ classification because the record did not demonstrate that the SIJ order actually granted relief from parental abandonment or neglect, beyond an order with factual findings to enable him to file his SIJ petition with USCIS. As such, we determined that he had not established that USCIS’ consent to his SIJ classification was warranted.

On motion, the Petitioner submits an *Amended Judgment and Decree of Special Findings of Fact and Rulings of Law* (amended SIJ order) issued by the probate and family court in [redacted] 2020. The amended SIJ order states, as relevant here, that the Petitioner “is declared dependent upon this court and this court appoints his aunt, [M-D-],¹ to continue providing protection and care.” The Petitioner argues on motion that this additional language, which states that he is in fact in the custody of his aunt, is sufficient to establish his eligibility for SIJ classification because he has been declared dependent on the court and placed in the custody of his aunt.

As we explained on appeal, SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where a petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS’ consent, petitioners must also establish that the requisite juvenile court or administrative determinations were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that the court’s orders were not sought primarily for the purpose of obtaining the status of an individual lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from parental maltreatment)). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS’ consent is warranted and the agency must consider whether the juvenile court’s determinations were sought in proceedings granting relief from parental maltreatment, beyond an order with factual findings enabling an individual to file an SIJ petition with USCIS. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d at 511, n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ determinations); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the juvenile sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the *USCIS Policy Manual* explained).

In the instant case, USCIS’ consent is not warranted because, as we previously determined, the Petitioner has not established that his primary purpose in seeking the SIJ orders was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to

¹ We use initials to protect the privacy of individuals.

obtain an immigration benefit. Although both SIJ orders declare the Petitioner dependent on the court, a juvenile court's dependency declaration, on its own, is insufficient to warrant USCIS' consent to SIJ classification absent evidence that the court issued the dependency declaration in juvenile court proceedings that actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 8 (AAO Oct. 11, 2019). Here, there is no evidence in the record that the probate and family court granted the Petitioner any specific relief related to the abandonment or neglect he endured in the past, or that the court took jurisdiction over the Petitioner in any other prior or related proceeding providing him with any type of relief or remedy from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law. The language in the amended SIJ order does not alter our prior determination, as the record does not establish that the probate and family court's statement that it appoints the Petitioner's aunt to "continue providing protection and care" constitutes a custodial placement, as he contends. Notably, the court does not reference custody or formally place the Petitioner in the physical or legal custody of his aunt, and the legal significance of this language, if any, is unclear. *See Matter of Chawathe*, 25 I&N Dec. at 375 (explaining that it is the petitioner's burden to demonstrate their eligibility by a preponderance of the evidence).

USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS' consent, the requisite SIJ determinations must be made under state law in connection with proceedings granting some form of relief or remedy from parental maltreatment. *See Matter of E-A-L-O-*, Adopted Decision 2019-04 at 8-9; *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 7-8 (concluding that USCIS' consent was warranted where juvenile court issued SIJ-related findings in child protection proceedings removing the juvenile from her abusive father's home and placing her in the custody of the state department of family and protective services). The Petitioner has not established that such relief was sought and granted in this case. Although we do not seek to diminish the unfortunate facts in the record regarding the Petitioner's experience in Guatemala, he has not established by a preponderance of the evidence that the SIJ orders provided him with any protective or remedial relief under Massachusetts law apart from findings enabling him to file an SIJ petition with USCIS.

III. CONCLUSION

The Petitioner has not demonstrated that he warrants USCIS' consent to his grant of SIJ classification. Consequently, he has not established his eligibility for SIJ classification.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.