



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

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

In Re: 18287363

Date: AUG. 30, 2022

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 Special Immigrant Juvenile (SIJ petition), and we subsequently dismissed the Petitioner's appeal of that decision and her motions to reopen and reconsider. The matter is again before us on motions to reopen and reconsider. On her motions, the Petitioner submits a brief and additional evidence to establish her eligibility for SIJ classification. 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 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

To establish eligibility for SIJ classification, a petitioner 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 of their 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner in the custody of a state agency or an individual or entity appointed by the state or 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 petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when a petitioner meets all other 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. 8 C.F.R. § 204.11(b)(5). USCIS may withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. *Id.* The petitioner bears 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

A. Relevant Factual and Procedural History

In [redacted] 2017, when the Petitioner was 20 years old, the [redacted] Probate and Family Court (juvenile court) in Massachusetts issued an *ORDER FOR SPECIAL FINDINGS OF FACT AND RULINGS OF LAW*, declaring the court’s “jurisdiction pursuant to [section 6, Chapter 215 of the Massachusetts General Law (MGL)] to make equity determinations within the meaning of Section 101(a)(27)(J) of the [Act][] and 8 C.F.R. § 204.11(a)[,](c).” The order also contained the court’s declaration that the Petitioner “remains dependent upon this Court’s jurisdiction in relation to her complaint in equity.” The juvenile court further determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner’s reunification with her parents was “not viable due to abuse, abandonment and neglect, or similar grounds under state law” and that it was not in her best interest to return to El Salvador, her country of nationality. Based on the juvenile court order, the Petitioner filed this SIJ petition in January 2017.

The Director denied the SIJ petition, concluding that the probate and family court was not acting as a “juvenile court” when it issued the court order in this case and that the decree itself lacked a dependency declaration or custodial placement, as well as a qualifying parental reunification determination. In our decision on appeal, we determined that the probate and family court acted as a juvenile court within the meaning of the Act when it issued the decree in the Petitioner’s case, and we withdrew the Director’s decision to the contrary. In addition, we found that the 2017 court order contained a qualifying juvenile dependency declaration as required by section 101(a)(27)(J)(i) of the Act. However, we dismissed the appeal, finding that the record did not establish that the juvenile court issued a qualifying parental reunification determination and we concluded that the Petitioner’s request for SIJ classification did not merit USCIS’ consent. On the Petitioner’s previous motions to reopen and reconsider, she submitted her *Motion for Special Findings of Fact and Rulings of Law* and the supporting legal memorandum submitted to the juvenile court. We concluded that the preponderance of the evidence demonstrated that the Massachusetts juvenile court issued a qualifying parental reunification determination issued in accordance with state law, and we withdrew our prior finding to the contrary.

B. USCIS’ Consent Is Not Warranted

To warrant USCIS’ consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered

custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* An example of court-recognized remedial relief includes the recognition of a petitioner's placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.* 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 in which a petitioner seeks and is granted some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law. *See* 8 C.F.R. § 204.11(d)(5)(ii).

On her prior motions, the Petitioner asserted that the juvenile court order was issued under section 39M of chapter 119 of the MGL and therefore gave her the ability to obtain additional relief from the court or other state agencies, including an abuse prevention order or referrals for medical or psychological services. She contended that the order itself allows her to establish residency for purposes of seeking healthcare and the juvenile court issued SIJ-related findings in her case in order to protect her from future harm, not only to enable her to file for SIJ status.

We previously determined that USCIS' consent was not warranted, in part because the record lacked a qualifying parental reunification determination under section 101(a)(27)(J)(i) of the Act. As the Petitioner demonstrated on her previous motion that the juvenile court issued a qualifying reunification finding, we withdrew this basis for withholding the agency's consent. However, she did not overcome our finding that her request for SIJ classification also did not merit USCIS' consent because the record did not show that she sought and was granted any form of protective relief from her parents' maltreatment under state law, apart from the dependency declaration and other SIJ-related findings by the juvenile court that enabled her to file for SIJ classification. We also noted that the special findings motion and legal memorandum to the court stated that the Petitioner did not seek any relief under state law from the court to protect her from her parents' maltreatment, and instead, reflect that she sought only a court order containing SIJ findings so that she "may apply to [USCIS] for consideration to be classified as a Special Immigrant Juvenile (SIJ) and seek protection in the United States." We therefore concluded that the record did not establish that the Petitioner sought the juvenile court decree primarily to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than to obtain an immigration benefit, such that USCIS' consent to her request for SIJ classification was warranted.

As we acknowledged in our previous decisions, the child protection provisions of the Massachusetts General Law authorize the probate and family court to protect children from "the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents" and in doing so, to issue special findings under section 39M to determine whether a child is dependent on the court "for findings, orders or referrals to support the health, safety and welfare of a child or to remedy the effects on a child of abuse, neglect, abandonment or similar circumstances." Mass. Gen. Laws ch. 119, §§ 1, 39M(a). Section 39M

further provides that a child may request other “orders necessary to protect the child against further abuse or other harm by filing a complaint for an abuse prevention order[,] . . . a complaint for support[,] . . . or seeking any other available remedy,” and may also obtain referrals from the court “for psychiatric, psychological, educational, occupational, medical, dental or social services or for protection against trafficking or domestic violence.” *Id.* at 39M(c),(d). Though we agreed with the Petitioner that the juvenile court here had authority to make child welfare determinations and grant her relief under section 39M, we concluded that the order did not reflect that the court actually exercised such authority to provide the Petitioner with any protective or remedial relief pursuant to the Massachusetts child protection provisions or any other Massachusetts law, apart from the findings required to file this SIJ petition with USCIS, and the record did not contain evidence that the court took jurisdiction over the Petitioner in any other prior or related proceedings providing her any type of relief or remedy from parental abuse, neglect, abandonment, or a similar basis under state law.

On the instant motions to reopen and reconsider, the Petitioner submits a brief, an amended *nunc pro tunc* SIJ order, and a copy of her previously submitted personal affidavit. She argues that the amended SIJ order and record as a whole demonstrate that the juvenile court entered the SIJ order to establish the Petitioner’s residency and for purposes of healthcare eligibility as well as to protect her safety and wellbeing. The Petitioner further contends that we erred by requiring her to show that the SIJ order was not obtained for the purpose of an immigration benefit.

We acknowledge the Petitioner’s assertions that the order itself allows her to establish residency for purposes of seeking healthcare and give her the ability to seek additional relief. However, the language of the amended SIJ order still does not reflect that the order grants her any relief or refer her for any child welfare services under state law. Here, the amended SIJ order states that the findings “were made due to the neglect and abandonment of [the Petitioner] by her parents and to provide for her safety and well-being. This order establishes [the Petitioner’s] residency in Massachusetts for the purposes of health care eligibility and is entered to protect [her] from future harm by granting her access to resources available via G.L. c. 199 § 39M, in accordance with the laws of the Commonwealth of Massachusetts.” However, the juvenile court did not issue any specific orders or referrals to support the Petitioner’s health, safety, and welfare under the 39M provisions as relief from parental maltreatment, as required by 8 C.F.R. § 204.11(d)(5)(ii). *See* Massachusetts General Laws, ch. 119, section 39M.

Regarding the Petitioner’s assertion that we erred by requiring her to show that the SIJ order was not obtained for the purpose of an immigration benefit, while “USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order”, a petitioner must establish “a primary reason” for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). Here, the preponderance of the evidence does not establish that a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. Accordingly, USCIS’ consent to a grant of SIJ classification is not warranted.

III. CONCLUSION

As the Petitioner has not established on her motions that her request for SIJ classification merits

USCIS' consent, she is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.