



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

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

In Re: 13620227

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 denied the petition, and we subsequently dismissed the Petitioner's appeal of that decision. We then dismissed the Petitioner's combined motions to reopen and reconsider our decision. The matter is now before us on second motion to reopen and reconsider. On combined motion, the Petitioner submits a brief and additional evidence to establish their eligibility for SIJ classification. Upon review, we will grant the motion to reopen and sustain the appeal. The motion to reconsider is moot.

**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 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, 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).<sup>1</sup> 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).

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<sup>1</sup> 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).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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

In our decision dismissing the Petitioner's combined motion to reopen and reconsider, incorporated here by reference, we determined that the Petitioner had not met their burden to establish eligibility for the SIJ classification because the record lacked a qualifying custody determination and a qualifying parental reunification determination. Specifically, we concluded that that the Petitioner had not met their burden to demonstrate that the Maryland circuit court applied Maryland state law in reaching its determinations regarding the Petitioner's custody and dependency and the viability of their reunification with their mother. The court issued those findings in its *Order Regarding Respondent's Eligibility for Special Immigrant Juvenile Status* (SIJ order), which referenced federal immigration law and regulations but did not reference any provision of Maryland state law.

With regard to the custody and dependency determination, we explained that the record, which consisted of the SIJ order, custody order, and a custody hearing transcript, did not demonstrate that the court applied state law when it placed the Petitioner in their father's custody. The records did not reference Maryland state law, and the SIJ order stated instead that the Petitioner is dependent on the court and legally placed under the custody of their father "within the meaning of" section 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11, which are federal statute and regulation, respectively. The custody order did not reference any statute or regulation. Because a juvenile court's dependency declaration or custodial placement must be made in accordance with state law governing such determinations, we concluded that the court's findings did not meet the requirements of section 101(a)(27)(J)(i) of the Act. *See* 8 C.F.R. § 204.11(c)(3)(1).

Relating to the viability of the Petitioner's reunification with their mother, we noted that the court found that the Petitioner's reunification with their mother was not viable due to abuse and neglect, but that the SIJ order did not reference any Maryland law underlying this finding, and the Petitioner did not submit any other evidence that the court considered Maryland law. Because a juvenile court's parental reunification determination also must be made in accordance with state law governing such determinations, we concluded that the court's findings did not meet the requirements of section 101(a)(27)(J)(i) of the Act. *See* 8 C.F.R. § 204.11(c)(3)(1).

On second motion, the Petitioner submits an amended SIJ order issued by the Maryland circuit court in 2020, *nunc pro tunc* to 2016. The *nunc pro tunc* order cites to Md. Code. Ann., Fam. Law § 1-201 for the court's jurisdiction and states that under this jurisdiction the court has placed the Petitioner under the sole legal and physical custody of their father. The amended order further finds that reunification with the Petitioner's mother is not viable due to abuse, neglect or abandonment or similar basis under Maryland state law. The *nunc pro tunc* order overcomes our prior determination and establishes, by a preponderance of the evidence, that the Maryland circuit court applied Maryland state law in reaching its determinations regarding the Petitioner's custody and dependency and the viability of the Petitioner's reunification with their mother. Consequently, on motion, the Petitioner has met their burden to establish that they are eligible for and merit USCIS' consent to their request for SIJ classification.

**ORDER:** The motion to reopen is granted and the appeal is sustained.