



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

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

In Re: 20612263

Date: OCT. 14, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). We dismissed the Petitioner's appeal and subsequent motion to reconsider. The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other 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 cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The issue before us is whether the Petitioner has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We find that the Petitioner has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy.

In our decision dismissing the Petitioner's appeal, we noted that the Petitioner was 18 years old at the time that the circuit court entered the SIJ order and he had not provided sufficient evidence to meet his burden of establishing, by a preponderance of the evidence, that the circuit court exercised jurisdiction over his dependency and/or custody and care as a juvenile under South Dakota law and,

accordingly, was acting as a juvenile court when it entered the SIJ order. We also found that neither the SIJ order nor underlying complaint cited to or referenced any of South Dakota's continuing jurisdiction provisions and the Petitioner had not otherwise established by a preponderance of the evidence that the circuit court exercised continuing jurisdiction over him or that it considered and applied any provision of South Dakota law extending the age of majority in his case when it entered the SIJ order. We thus concluded that as the Petitioner had not established that the circuit court acted as a juvenile court for SIJ purposes when it issued the SIJ order, he likewise had not established that a juvenile court made qualifying determinations concerning his juvenile dependency and/or custody and care, viability of reunification with his parents, or best interest. Therefore, the Petitioner had not established his eligibility for SIJ classification under section 101(a)(27)(J) of the Act.

We dismissed the Petitioner's motion to reconsider, affirming our decision that the circuit court order was not issued pursuant to the court's jurisdiction over the Petitioner as a juvenile, because the Petitioner was over 18 years old and no longer a child or juvenile under South Dakota law when the court issued the order. While we acknowledged that South Dakota circuit courts have jurisdiction over probate issues involving child welfare and custody and may qualify as a juvenile court under state law, they are courts of general jurisdiction under South Dakota law and therefore, do not rule on juvenile matters in every case before them. Furthermore, while we recognized that circuit courts in South Dakota may have continuing jurisdiction over the custody and care of individuals between the ages of 18 and 21 in limited circumstances, the circuit court did not cite to any state law that provided it with jurisdiction over the Petitioner as a juvenile. We also noted that the circuit court's continuous references to the Petitioner as a "protected person" as opposed to a "minor" throughout the SIJ order, supported the notion that the circuit court did not consider the Petitioner as a minor.

With the instant motion, the Petitioner first argues that the circuit court had jurisdiction over the Petitioner as a juvenile because "jurisdiction occurs at the time a matter is commenced" and at the time the summons were served on the defendants, the Petitioner was 17 years old. Section 29A-5-201 of the S.D. Codified Law states that "a guardian or conservator of a minor may be appointed upon petition, the filing of a statement of financial resources, and after notice and hearing." At the time the Petitioner was appointed a guardian, on [REDACTED] 2017, the Petitioner was already over 18, and was thus no longer a "minor" pursuant to South Dakota law. The SIJ order did not make any reference to the Petitioner as a minor under the South Dakota law governing the guardianship proceeding; instead, it deemed the Petitioner to be a "protected person," which is defined under South Dakota law as "any individual for whom a guardian or conservator has been appointed *other than for reasons of minority*." S.D. Codified Laws § 29A-5-102 (emphasis added). Both guardians and conservators can be appointed for a "minor or protected person." *Id.* Given the determination that he was a protected person at the time he was appointed a guardian, rather than a minor, the Petitioner has not established that the circuit court was exercising its jurisdiction over him as a juvenile or minor under South Dakota law when it entered the SIJ order in his case.

The Petitioner further asserts that South Dakota "consistently extends juvenile court jurisdiction and the definition of juvenile/child/minor to individuals between the ages of 18 and 21." As we detailed in our decision to dismiss the appeal, we recognize that circuit courts in South Dakota may have continuing jurisdiction over the custody and care of individuals between the ages of 18 and 21 in certain circumstances. *See* S.D. Codified Laws §§ 25-7A-1 (defining "[d]ependent child" for purposes of "collection of child support" as a "a needy child under the age of eighteen or under the age of

nineteen and a full-time student in a secondary school . . .”), 26-6-35 (providing that a child welfare agency and the Department of Corrections may provide foster care for a person over the age of majority but less than 21 years of age if the person is under the continuing juvenile jurisdiction of the Department of Corrections), and 26-7A-1(6) (2016) (defining “child” as a person less than 18 years of age and any person under 21 years of age in delinquency proceedings who is under the continuing jurisdiction of the court or who is before the court for an alleged delinquent act committed before the person’s 18th birthday). Nevertheless, the Petitioner has not established that the circuit court exercised jurisdiction over him as a juvenile in regard to his guardianship proceeding.

As the Petitioner has not established by a preponderance of the evidence that the circuit court acted as a juvenile court for SIJ purposes when it issued the SIJ order, he likewise has not established that a juvenile court made qualifying determinations concerning his juvenile dependency and/or custody and care, viability of reunification with his parents, or best interest. Therefore, the Petitioner has not established his eligibility 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.