



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

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

In Re: 20449825

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 grant the motion to reopen and sustain the appeal.

**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). 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) 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. 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).

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 eligibility criteria and establishes that the request for SIJ classification is *bona fide*, which requires the petitioner to establish that a

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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).

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).

## I. ANALYSIS

As previously detailed, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria, section 101(a)(27)(J)(i)-(iii) of the Act, and the request for SIJ classification is bona fide. 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). For USCIS to consent, petitioners must establish the juvenile court order or supplemental evidence includes the factual bases for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5)(i).

In our decision dismissing the Petitioner's appeal, we first concluded that, contrary to the Director's decision, the order issued by the Massachusetts Probate and Family Court (SIJ order) was issued by a "juvenile court," per 8 C.F.R. § 204.11(a), and the SIJ order contained a qualifying dependency determination. However, we then found that the SIJ order did not contain a qualifying parental reunification determination because the Petitioner did not show the state law basis for the SIJ order. We further found that USCIS' consent was not warranted because the Petitioner did not contain a qualifying parental reunification determination, and the Petitioner did not show that the SIJ order was sought for the primary purpose of obtaining relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit.

On motion to reconsider, we determined that the Petitioner had not met her burden to establish that parental reunification was not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required. We also determined that the record did not reflect that the SIJ order provided the Petitioner with any other actual protective or remedial relief under Massachusetts law apart from findings enabling her to file an SIJ petition with USCIS.

With the instant motion, the Petitioner submits a *Nunc Pro Tunc Decree of Special Findings of Fact and Rulings of Law (nunc pro tunc order)*, issued by the family court in 2021, *nunc pro tunc* to 2017. The *nunc pro tunc* order cites section 39M of Chapter 119 of the Massachusetts General Law<sup>2</sup> for its jurisdiction, declares the Petitioner dependent on the court, cites to Massachusetts law regarding abandonment and neglect upon which the court made its reunification finding, and reiterates that reunification with the Petitioner's parents is not viable due to abandonment and neglect and that it is not in the Petitioner's best interest to return to El Salvador. The *nunc pro tunc* order also refers the Petitioner

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<sup>2</sup> Section 39M of the Massachusetts General Laws, Public Welfare Title, Chapter 119 (section 39M), in part, defines a child as an unmarried person under 21, prescribes that a court issuing findings under section 39M shall be acting under its jurisdiction to make decisions for the welfare of the child, and provides for retroactive application to qualifying requests for SIJ-related findings.

to probation for “medical, occupational, counseling, and educational services”<sup>3</sup> to provide for her “health, safety, and welfare, to establish residence for the purposes of healthcare and other benefits for which she is eligible in Massachusetts, and to protect [the Petitioner] from future harm.” Further, the court found that it is in the Petitioner’s best interest to not return to El Salvador and remain in the United States.

The *nunc pro tunc* order overcomes our prior determination and establishes, by a preponderance of the evidence, that the Petitioner has demonstrated that she is eligible for and merits USCIS’ consent to her request for SIJ classification. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS’ consent, she has established eligibility under section 101(a)(27)(J) of the Act.

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

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<sup>3</sup> With the instant motion, the Petitioner has submitted documentation to establish that she has been receiving medical, dental, and academic services pursuant to the SIJ order.