



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

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

In Re: 19080665

Date: OCT. 21, 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), concluding that the court did not make a juvenile dependency or custody determination under Texas law. We dismissed a subsequent appeal, and the Petitioner now files a motion to reconsider our decision. Upon review, we will dismiss this motion to reconsider.

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 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).¹ 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).

U.S. Citizenship and Immigration Services (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 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). USCIS may also withhold consent

¹ The Department of Homeland Security issued a final rule (SIJ 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).

if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. 8 C.F.R. § 204.11(b)(5).

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. 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 appeal,² incorporated here by reference, we determined that, per the record, when the Petitioner was 17 years of age, the District Court for the [redacted] Judicial District in [redacted] Texas (District Court), issued an *Order of Dependency and Findings* (declaratory judgment) and an *Order on Motion for Clarification of Dependency Findings* (clarifying order), made the requisite dependency, parental reunification, and best interest determinations under Texas law, and set forth facts forming the bases for these determinations. We advised that SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all other eligibility criteria and establishes that the juvenile court or administrative determinations were sought primarily to gain relief from parental maltreatment, and noted that a declaration of dependency, absent any evidence that actual relief from parental maltreatment was granted, is generally not sufficient to warrant USCIS' consent.³ We determined that "there is no evidence that the declaratory judgment was sought to compel an action that provides "relief from abuse or neglect," or abandonment" and further noted that none of the provisions in the District Court's orders indicated that they were issued in relation to any juvenile dependency, child custody, or other protective proceeding over the Petitioner under Texas law. We therefore concluded that the record did not establish, by a preponderance of the evidence, that a primary purpose for which the Petitioner sought the District Court's orders was to obtain relief from parental abuse, neglect, abandonment, or a similar basis to these grounds. Accordingly, we determined that the Petitioner had not demonstrated that his request for SIJ classification merited USCIS' consent.

On motion to reconsider, the Petitioner contends that we erred in concluding that USCIS' consent was not warranted. He argues that he has shown that he sought the Court proceeding "to grant relief from parental abandonment and neglect" because the District Court made findings in the declaratory

² See *In: Re 6361367* (AAO Apr. 18, 2021)

³ In our decision, we relied upon *Matter of E-A-L-O-*, Adopted Decision 2019-04 (AAO Oct. 11, 2019) and *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019). These decisions have been superseded by the SIJ Final Rule. See USCIS Policy Alert PA-2022-14, *SUBJECT: Special Immigrant Status and Adjustment of Status 2* (June 10, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf>. Although these decisions have been superseded, current USCIS policy similarly provides that DHS generally consents to the grant of SIJ classification "[w]here the factual basis for the court's determinations demonstrates that the juvenile court order was sought to protect the child and the record shows the juvenile court actually provided relief from a abuse, neglect, a abandonment, or a similar basis under state law." 6 *USCIS Policy Manual* J.3(A)(2), www.uscis.gov/policymanual.

judgement and the clarifying order that his father neglected and abandoned him, and that it was in his best interest to remain in the custody of his mother who cared for him. The Petitioner also contends on motion that our decision “fundamentally misunderstands the purpose and value of the [District Court’s] custodial order to protect the Petitioner from parental mistreatment” because the Court’s order “empowered the Petitioner’s mother to provide care for the Petitioner as his sole legal custodian.” We do not find the Petitioner’s argument persuasive. As we noted in our decision, an order of dependency “absent any evidence that actual relief from parental maltreatment was granted, is generally not sufficient to warrant USCIS’ consent.” Here, the evidence shows that the District Court made findings that his father neglected and abandoned him and that he should remain in the custody of his mother. However, upon review, the record below did not include evidence demonstrating the actual relief granted by the District Court from this parental maltreatment. For example, although the District Court found that the Petitioner should remain in his mother’s custody, the record lacked evidence, such as the custodial order referenced by the Petitioner on motion, or other evidence, demonstrating that the District Court had placed the Petitioner in his mother’s custody in the past for the purpose of obtaining relief from parental abuse, neglect, abandonment, or a similar basis to these grounds under Texas law. Further, as we noted in our decision, none of the provisions in the declaratory judgement or clarifying order indicate that they were issued in relation to any juvenile dependency, child custody, or other protective proceeding over the Petitioner under Texas law. Absent this evidence, the record does not reflect, by a preponderance of the evidence, that these District Court orders actually provided the Petitioner relief from abuse, neglect, abandonment, or a similar basis under state law such that USCIS’ consent is warranted.

For the above-stated reasons, the Petitioner has not shown 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. He therefore has not satisfied the requirements for a motion to reconsider pursuant to 8 C.F.R. § 103.5(a)(3). Accordingly, the Petitioner’s motion to reconsider is dismissed and his SIJ petition remains denied.

ORDER: The motion to reconsider is dismissed.