



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

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

In Re: 26427398

Date: APR. 20, 2023

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). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) and we dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner submits a brief and asserts that the record establishes her eligibility for SIJ classification, and she contends that we erred in our determination. Upon review, we will dismiss the motions.

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). 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). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

To establish eligibility for SIJ classification, petitioners must show, among other things, that they 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), (c)(1).¹ 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). Petitioners bear the burden of proof to establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

In [] 2020, when the Petitioner was 17 years old, the [] County Chancery Court (Chancery Court) in Mississippi issued an order titled *Order Granting Custody [of] a Minor* (Order) and awarded custody of the Petitioner to her mother, N-M-A-.² The Chancery Court determined that

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. See *Special Immigrant Juvenile Petitions*, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

² We use initials to protect identities.

“reunification with the [Petitioner’s] father is not viable because the father is deceased[,]” “it is in the best interest of [the Petitioner] to remain in the State of Mississippi in the long term care, custody, and control of [N-M-A-],” and “it is not in the best interest of [the Petitioner] to return to her home country.” Based on the Chancery Court’s Order, the Petitioner filed her SIJ petition in November 2020.

After reviewing the record, the Director denied the SIJ petition, concluding that the Petitioner did not submit sufficient evidence to show that the Chancery Court’s Order included the requisite parental reunification determination made pursuant to Mississippi state law. On appeal, we agreed with the Director and determined that the record lacked a qualifying parental reunification determination because the Chancery Court did not specify a state law basis. The Petitioner then filed her motion to reopen and reconsider.

On motion, the Petitioner makes several arguments as to why we erred in our decision dismissing her appeal. The Petitioner asserts that we acted arbitrarily and capriciously in dismissing the appeal because she claims we called into question the Chancery Court’s authority in issuing the Order. Upon review of our previous decision, we did not question the authority of the Chancery Court in issuing orders related to minors or any matters within its jurisdiction. Rather, we examined the Chancery Court’s order as it related to the Petitioner’s eligibility for SIJ classification, a federal benefit, and determined she had not established by a preponderance of the evidence that she had been subject to a state juvenile court order determining that she cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under Mississippi state law. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) (“Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose.”).

The Petitioner also argues that the Director and the AAO have “invented” a requirement that the Chancery Court state the specific state law from which it derives its authority to make a custody or reunification determination. The Petitioner asserts that 8 U.S.C. § 1101(a)(27)(J) does not require “a family court to state a specific statute.” However, the Act requires a juvenile court’s determination that SIJ petitioners 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)(i) of the Act. Thus, the plain language of the Act requires this reunification determination to be made under state law. *See id.*; 8 C.F.R. § 204.11(c)(1). Hence, pursuant to the implementing regulations for SIJ classification, and because the Act references such findings as made under state law, the record must contain evidence that the juvenile court made a determination pursuant to, and based on, relevant state law. 8 C.F.R. § 204.11(c)(3); *see generally* 6 *USCIS Policy Manual* J.3(A)(1).³ Here, the Petitioner has not submitted evidence that a juvenile court issued any order with the requisite parental reunification determination pursuant to Mississippi state law.

³ <https://www.uscis.gov/policy-manual> (indicating, as guidance, that the SIJ order should use language establishing that the specific judicial determinations were made under state law and noting that the “requirement may be met if the order(s) cite those state law(s), or if the petitioner submits supplemental evidence which could include, for example, a copy of the petition with state law citations, excerpts from relevant state statutes considered by the state court prior to issuing the order, or briefs or legal arguments submitted to the court”).

Relatedly, the Petitioner argues that death is the same as abandonment under Mississippi law, and the death of the Petitioner's father consequently means he abandoned her.⁴ As she did on appeal, the Petitioner refers to several Mississippi statutes and caselaw provisions covering areas such as parental reunification, custody, parental rights, desertion, and abandonment. However, neither the caselaw nor the statutes mentioned by the Petitioner were cited in the Order or the pleadings. Thus, while the *Petition for Custody* and the affidavits from the Petitioner and her mother discuss the abandonment of the Petitioner by her father, they do not demonstrate that the Chancery Court made a parental reunification determination based on relevant Mississippi state law, as required.⁵

The Petitioner has not submitted new evidence sufficient to establish that she is eligible for SIJ classification. Therefore, she has not met the requirements for a motion to reopen. Furthermore, the Petitioner has not established that our decision was based on an incorrect application of law or policy. Therefore, she has not demonstrated that a reconsideration is warranted. Hence, the Petitioner has not established her eligibility for SIJ classification by a preponderance of the evidence.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

⁴ The Petitioner also argues that the Chancery Court Order could only have been based on Mississippi state law. This argument is unavailing because, as noted above, the implementing regulations for SIJ classification require the record to contain evidence that the juvenile court made a determination pursuant to, and based on, relevant state law. 8 C.F.R. § 204.11(c)(3).

⁵ Further, although not discussed in the Director's decision or in the dismissal of the Petitioner's appeal, when a juvenile court determines parental reunification is not viable due to a basis similar to abuse, neglect, or abandonment, the petitioner must provide evidence of how the basis is legally similar to abuse, neglect, or abandonment under state law. 8 C.F.R. § 204.11(d)(4); *see generally* 6 *USCIS Policy Manual* J.3(A)(1) (explaining, as guidance, a legal conclusion from the juvenile court is required to establish that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law). Here, the Court stated that the Petitioner's reunification with father was not viable because he was deceased, but it did not draw a legal conclusion that death is a similar basis under Mississippi law to abuse, neglect, or abandonment. *Id.*