



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

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

In Re: 29240994

Date: NOV. 17, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. The Director of the Raleigh-Durham, North Carolina, Field Office revoked the Petitioner's approved Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed a subsequent appeal. The matter is now before us on a late-filed motion to reopen. Upon review, we will grant the motion and sustain the appeal.¹

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). For a motion based on a change in law, the moving party must identify the precedent, statute, or regulation at issue and establish how the change materially affects the outcome of the case. *See Matter of O-S-G-*, 24 I&N Dec. 56, 59-60 (BIA 2006). 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 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), (c)(1).² 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. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

¹ In addition to the instant motion, the Petitioner filed a subsequent motion to reopen, which is also pending before us. As we are granting the instant motion, we are dismissing the second motion to reopen as moot in a separate decision.

² 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).

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 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 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). 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 [] 2014, when the Petitioner was 17 years of age, the North Carolina District Court Division of the General Court of Justice for [] County (District Court) exercised jurisdiction as a juvenile court and issued an “ORDER GRANTING EX-PARTE EMERGENCY CUSTODY” (SIJ order), granting emergency legal custody, care, and control of the Petitioner, the minor child, to her aunt M-C-V-F-³ for the Petitioner’s safety and protection under relevant sections of North Carolina General Statutes, including sections 50-13.5(c)(2), 50A-201, 50A-204(a) and 50A-311. The District Court in its order also determined, among other findings necessary for SIJ eligibility, that the Petitioner’s reunification with both her parents was not viable due to “abuse, neglect, abandonment, or a similar basis found under North Carolina law”; she also continued to be eligible for long term foster care due to “the abuse, neglect and abandonment by her parents”; and that it was not in her best interest to be returned to Honduras, her country of nationality. The SIJ order also included the court’s factual findings in support of these determinations. The record also contains the Petitioner’s detailed underlying court documents and factual assertions she and M-C-V-F- presented to the court.

Based on the District Court order, the Petitioner filed her SIJ petition in July 2014, which was initially approved. However, following a notice of intent to revoke, the Director revoked approval of the SIJ petition, concluding that the court order lacked a qualifying parental reunification finding because the ex parte order granting custody under the court’s temporary emergency jurisdiction did not establish that the court had made a legal determination about the *future* viability of parental reunification. We later dismissed the Petitioner’s appeal on the same basis. We further concluded that the Petitioner’s request for SIJ classification also did not warrant USCIS’ consent because the record also lacked a reasonable factual basis for the court’s best interest determination.

On the instant motion, the Petitioner seeks reopening based on change of law as set forth in *Perez v. Cuccinelli*, 949 F.3d 865 (4th Cir. 2020). She also reasserts her SIJ eligibility and contends that her request for SIJ classification warrants USCIS’s consent.⁴

As stated, 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. This reunification determination must be made under state law.

³ We use initials to protect individuals’ privacy.

⁴ Upon review of the Petitioner’s explanations and new supporting evidence she provided with the instant motion to reopen, she has shown that the delay in filing the motion was reasonable and beyond her control, such that reopening is warranted. 8 C.F.R. § 103.5(a)(1)(i). We therefore now address the Petitioner’s substantive arguments.

See id.; *see also* 8 C.F.R. § 204.11(c)(1)(ii). USCIS defers to the juvenile court in making such determination, which may vary between states, and does not require the court to utilize any specific language other than what is required under state law. *See generally* 6 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policy-manual>.

As noted, we previously dismissed the appeal, concluding that at the time the SIJ order was issued, it lacked a qualifying parental reunification determination because the ex parte order granting custody under the court's temporary emergency jurisdiction did not establish that the court had made a legal determination as to the *future* viability of parental reunification, and consequently the SIJ order lacked a qualifying parental reunification determination. Subsequent to our decision on appeal, in *Perez*, which also involved a North Carolina District Court's (2015) ex parte temporary custody order under the same state statute sections as referenced in the Petitioner's SIJ order, the United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this matter arises, held that "neither a finding of the permanent non-viability of reunification nor a permanent custody order is required" for SIJ eligibility under the Act. 949 F.3d. at 873. The court in *Perez* further held that the term "custody" as used under section 101(a)(27)(J)(i) of the Act "contains no temporal requirements" and custody may be granted on a temporary or permanent basis, and that such determinations are traditionally rendered by state courts applying state law into which agencies may not impermissibly intrude. *Perez*, 949 F.3d. at 873-76. Accordingly, we withdraw our prior determination that the ex parte temporary custody order was insufficient to establish that the court made the requisite determination that the Petitioner's reunification with one or both of her parents was not viable.

Our review of the record on motion, including the SIJ order, reflects that the District Court found that the Petitioner's reunification with both her parents was not viable due to abuse, neglect, abandonment, or a similar basis under state law, and cited relevant sections of the North Carolina General Statutes, sections 50A-204(a) and 50A-311, providing for the court's legal authority to protect minors by granting emergency custody of them to appointed individuals due to abandonment, risk of mistreatment or abuse, or immediate likelihood of serious physical harm. 8 C.F.R. § 204.11(c)(1)(ii) (stating that parental reunification finding must be made under state law); *see also* 87 Fed. Reg. 13066, 13086 (March 8, 2022) ("USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law"); 6 USCIS Policy Manual at J.2(A) (providing guidance to officers on deference to juvenile court findings made under state law and explaining that we do not go behind a juvenile court order to make independent findings about parental maltreatment and the juvenile's best interest). The underlying petition and documents the Petitioner presented to the court also consistently indicate that her father abandoned her before her birth, he never supported her, and she has never seen or spoken with her father; and that the Petitioner's mother left her in M-C-V-F-'s care and never provided any financial assistance for the Petitioner, celebrated any birthdays or special holidays with her, or explained why she abandoned the Petitioner. The underlying court documents also indicate that the mother physically and verbally abused the Petitioner, frequently insulting and berating her that she wished the Petitioner was never born.

Further, contrary to our prior determination, the record shows that the District Court specifically considered the Petitioner's safety and well-being under relevant state law and made a qualifying determination that it was not in the Petitioner's best interest to be returned to Honduras, her country of nationality, and establishes a factual basis for this determination. 8 C.F.R. § 204.11(c)(2), (d)(5)(i); 6 USCIS Policy Manual J.2(C)(3) (explaining that the "child's safety and well-being are typically the

paramount concern” for best interest findings). Accordingly, the District Court also made a qualifying best interest determination, and we withdraw our prior determination to the contrary.

Moreover, the record shows that the court made the requisite SIJ findings as to juvenile dependency and/or custody and establishes a factual basis for these determinations. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(c), (d)(5)(i). Further, we discern no evidence that materially conflicts with the SIJ related determinations. 8 C.F.R. § 204.11(b)(5). The record thus shows that a primary reason the Petitioner sought the court order was to obtain relief from parental maltreatment, and that she was granted such relief under applicable state law, as evidenced by the court’s custody order. 8 C.F.R. § 204.11(d)(5)(ii). As the record otherwise shows that she meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS’ consent, she has established her eligibility for SIJ classification under the Act. 8 C.F.R. §§ 204.11(b), (d). Considering the foregoing, the Petitioner has met the requirements of a motion to reopen, and we will therefore grant the motion and sustain her appeal. 8 C.F.R. § 103.5(a)(2).

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