



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

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

In Re: 28102388

Date: OCT. 11, 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).

The Director of the National Benefits Center revoked the approval of the Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the Petitioner did not establish that his SIJ court order contained a qualifying parental reunification or best interest determination, and the Petitioner did not warrant United States Citizenship and Immigration Services' (USCIS) consent. We dismissed his appeal and a subsequent motion to reopen. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will grant the motion and sustain the appeal.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

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).<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; 8 C.F.R. § 204.11(c)(1). The record must also contain a judicial

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<sup>1</sup> 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).

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).

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).

In our prior decision, incorporated here by reference, we discussed the Petitioner's history seeking SIJ classification. Notably, the Director revoked the approval of his SIJ petition after determining that his SIJ order did not contain the required parental reunification determination or best interest determination, and that he therefore did not warrant USCIS' consent. We dismissed the Petitioner's appeal and concurred with the Director's conclusions. The Petitioner then filed a motion to reopen, where he stated that he had obtained a nunc pro tunc order from the Family Court in [REDACTED] 2022; however, we noted that the Petitioner had only submitted the first page of the order, and we dismissed his motion to reopen, as he had not overcome the grounds for our dismissal his appeal.

With his second motion to reopen, the Petitioner submits a complete copy of the nunc pro tunc order. In [REDACTED] 2022, the Family Court for the State of New York in and for the County [REDACTED] (Family Court) issued the "AMENDED ORDER Special Immigrant Juvenile Status Nunc Pro Tunc," (amended order) which states that at the time of the custody hearing in February 2016, the Petitioner was an unmarried and under the age of 21. The amended order also states that the Family Court ordered the Petitioner dependent upon the court and placed him in the custody of W-R-M-B-<sup>2</sup>, his father, "pursuant to Article 6 of the New York Family Court Act on February 5, 2016." In the discussion regarding the reunification of the Petitioner with his mother, the amended order notes that reunification was not viable due to abandonment and neglect pursuant to Social Service Law §384-b, as his mother "was not present in [the Petitioner's] life since he was an infant when she abandoned [him]," that he had not had contact with his mother since he was a year old, and that she had not provided any financial support for his care. The Family Court also determined that the Petitioner had been neglected pursuant to the New York Family Court Act at § 1012(f) as his mother had "failed to supply him with adequate food, clothing, and shelter since he was a young child."

The Family Court also determined that it would not be in the Petitioner's best interest to return to Honduras, his country of nationality, as there would be "no one there who could properly provide for and care for his person." The amended order notes that the Petitioner came to the United States to "escape the extreme delinquency that surrounded him in Honduras. [The Petitioner] and his family lived in a rural area of Honduras where there were no opportunities for social mobility and gangs

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<sup>2</sup> We use initials to protect the identity of individuals.

invaded the area. Concerned about his future, [the Petitioner] decided to come to the United States so he could have access to better opportunities and better living conditions.” The amended order finally states that the Petitioner’s father has been able to care for him since his arrival in the United States, including providing a safe and stable home.

As such, we determine that the amended order addresses the prior reasons for revocation and dismissal of the Petitioner’s SIJ petition, appeal, and motion to reopen. The Petitioner has established that the Family Court relied upon New York state law in making its determinations, and that the amended order contains adequate parental reunification and best interest determinations. We further determine that the Petitioner has established that he warrants USCIS’ consent to SIJ classification, as the amended order contains the required factual basis for the Family Court’s determinations, and he has established that his SIJ petition was bona fide.

Because the Petitioner has established eligibility on motion to reopen, we need not address the arguments presented on motion to reconsider. The motion to reconsider is moot.

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

**FURTHER ORDER:** The motion to reconsider is dismissed.