



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

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

In Re: 28282493

Date: OCT. 30, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner, a native of China, 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 petition, concluding that the Petitioner did not establish that consent was warranted, because she was unable to determine whether the Petitioner's primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes. We dismissed a subsequent appeal. 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 dismiss the motion.

I. LAW

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).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

¹ 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).

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 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).

II. ANALYSIS

In our prior decision, incorporated here by reference, we discussed the court orders obtained by the Petitioner in California through which he had filed his Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition) which determined that he had been abandoned by his parents and could not return to his native country of China, as well as the evidence submitted to support his claims. We noted that the record contained several inconsistencies between the Petitioner's statements to the court and those submitted in support of his SIJ petition, as well as evidence contained in the record. Specifically, we discussed the Petitioner's statement to the Superior Court that he came to the United States in April 2017 after his parents asked J-Y-², his guardian, if he could spend his school vacation with her. The Petitioner also claimed that after his school vacation was over, J-Y- spoke to his mother who stated that she was in financial distress, could no longer care for the Petitioner, and that there was no return ticket to China, and no one to care for him there. The Petitioner provided a memorandum to the court which stated that J-Y- "then enrolled [the Petitioner] in school." However, we noted that the record indicates that the Petitioner applied for an F-1 student visa in March 2017 and entered the United States with that visa on April 9, 2017, to study at [REDACTED] Academy beginning in mid-April. We noted that the Petitioner did not disclose to the juvenile court that he arrived in the United States with a student visa for the purpose of studying, with funding provide by his parents, at a private school beginning immediately upon his arrival in April 2017.

We further discussed inconsistent statements from J-Y- in support of the SIJ petition, where she initially stated that she was aware that the Petitioner would spend his school vacation and attend school in the United States and later claiming that she decided to register the Petitioner in school after she learned that the Petitioner's parents had abandoned him in the United States. We stated that J-Y-'s statement was further contradicted by the fact that she paid for the Petitioner's schooling prior to his arrival to the United States in April 2017. Our prior decision also noted that records indicated that the Petitioner traveled to China in June 2017 for one month, despite his claims that his parents had abandoned him and told that there was no ticket for him to return to China. The Petitioner claimed that he returned to China to attend an SAT preparation course and contended that J-Y-'s cousin paid

² We use initials to protect the identity of individuals.

for this trip, and he had no contact with his family while there. However, we determined that the Petitioner did not explain why he failed to disclose the trip during his proceedings before the Superior Court in August 2017, or in the documents filed with his SIJ petition in November 2017. Finally, we determined that it remained unclear how the Petitioner funded his tuition and living expenses in the United States, and referred to the Director's decision, which noted that the Petitioner's joint account with J-Y- was funded by cash deposits, transfers from the [redacted] and J-Y-'s spouse's account. J-Y-'s spouse's account was mainly funded by ATM deposits, with no identifiable source of those deposits into the account. We also note that J-Y-'s spouse received a \$5,000 wire transfer for "living expenses" from the Petitioner's father in October 2018. We acknowledged the Petitioner's contention that the wire transfer was not inconsistent with his claims of abandonment because it represented a small portion of his tuition and living expenses. However, the Petitioner did not explain on appeal how his father was able to transfer \$5,000 to him for living expenses after consistently representing that his parents were in such financial distress that they could no longer take care of him.

Ultimately, we determined that the juvenile court relied on information that was inconsistent with the record before us to make its determination that the Petitioner was abandoned by his parents. The Petitioner did not disclose to the court that he had recently visited China and returned to the United States around the same time he claims his parents abandoned him. The record contains additional inconsistencies concerning his purpose in traveling to the United States, when he learned his parents abandoned him, when the decision was made to enroll him in school, and other facts material to the finding that reunification with his parents was not viable due to abandonment. On appeal, the Petitioner did not resolve or provide a reasonable explanation for these inconsistencies.

On motion, the Petitioner submits a brief and an updated declaration from the Petitioner. In the Petitioner's brief and additional declaration, he contends that the statements provided to the Superior Court were prepared by his former attorney, and that he did not understand English very well, and signed the documents because he was told to do so. The Petitioner states that the first time he met that attorney was at the guardianship hearing in August 2017 and does not remember meeting the attorney before or after that hearing. The Petitioner further claims that his declaration to the court could not have referenced his return trip to China, as it was submitted to the Superior Court in May 2017, and the trip had not yet occurred. While we acknowledge his claims, the Petitioner's hearing did not occur until August 2017, after he had returned to the United States, and he further does not explain why he did not inform USCIS of this trip when he filed his SIJ petition. Further, upon review of the document the Petitioner submitted with his initial SIJ petition evidence and claims was his declaration "In Re the Guardianship of the Person of [The Petitioner], a Minor," this document bears the Petitioner's signature with a date of October 26, 2017, which was immediately prior to the filing of his SIJ petition, and as such, it cannot be determined whether this is the same document submitted to the Superior Court with his initial filings.

In his updated declaration, the Petitioner adds claims of severe abuse inflicted upon him by his parents while he lived with them in China. While we do not seek to minimize the Petitioner's claims, these statements were not submitted to the court during his SIJ proceedings, and as such, we cannot consider them here, as the Superior Court only determined that the Petitioner could not reunite with his parents based on abandonment. The Petitioner now claims that his parents told him that he needed to come to the United States "to see if [he] wanted to study [here]" and that this was part of his parents' plan to

abandon him. He again contends that during his trip to China, he had no contact with his family. The Petitioner reiterates that he was young and was not fluent in English and relied on the attorney hired by his guardian to accurately represent him. However, the Petitioner's updated declaration does not explain the inconsistencies outlined above and in our previous decision, and as such he has not established that his request for SIJ classification was bona fide, such that USCIS' consent is warranted. Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.