



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

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

In Re: 13189211

Date: MAR.4, 2021

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a citizen of Guatemala, 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 (Director) denied the petition, and the Petitioner appealed the decision to us. We dismissed the appeal and the matter is now before us on motions to reopen and reconsider. On her motions, the Petitioner submits a brief and an amended order from a New York Family Court. Upon review, we will grant the motion to reopen and sustain the appeal.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). 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. Here, the Petitioner's motion to reopen meets the requirements of 8 C.F.R. § 103.5(a)(2), and the record otherwise establishes the Petitioner's eligibility for SIJ classification, as discussed in this decision. The motion to reconsider is therefore moot.

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) of the Act; 8 C.F.R. § 204.11(c). 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. 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).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all

other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. *See also Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 2, 6-7 (AAO Oct. 11, 2019) (providing guidance on USCIS’ consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). A petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner is a citizen of Guatemala. In [REDACTED] 2016, when she was 20 years old, the New York Family Court for [REDACTED] (Family Court) appointed guardianship of the Petitioner to her mother, T-I-C-¹. The same day, the Family Court separately issued an *ORDER-Special Immigrant Juvenile Status* (SIJ order) making determinations related to the Petitioner’s SIJ eligibility. The Family Court determined that the Petitioner “is dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court.” The Family Court also determined that “[r]eunification with one or both of her parents is not viable due to neglect; abandonment; and/or a similar basis under New York law because [F-I-P-], [REDACTED]’s father, passed away in 2003” The Family Court found that it was not in the Petitioner’s best interest to return to Guatemala “due to the safety concerns related to various individuals threatening her life, harsh labor conditions, and the lack of financial support, educational opportunities and healthcare resources available in Guatemala.”

In January 2017, based upon the Family Court’s orders, the Petitioner filed her SIJ petition. The Director denied the SIJ petition because the record did not establish that the court order was issued by a juvenile court, lacked a qualifying dependency or custody finding, and did not contain a qualifying parental reunification determination. On appeal, we recognized the applicability of the *R.F.M. v. Nielsen* judgment² to her case, partially overcoming the grounds of the Director’s denial related to the Family Court’s authority as a juvenile court and the Petitioner’s dependency on the court. We again notified the Petitioner that the record lacked a specific state law basis for the non-viability of parental reunification finding, and we withheld our consent on that ground.

On current motions, the Petitioner submits an *AMENDED SPECIAL FINDINGS ORDER* (amended SIJ order) issued by the Family Court *nunc pro tunc* to [REDACTED] 2016. The amended SIJ order makes additional findings regarding the Petitioner’s SIJ eligibility and states, in relevant part:

Reunification of [the Petitioner] with her father [F-P-I-] is not viable under New York law due to his death in 2003, when [the Petitioner] was only 7-years-old. Under New York law, [the Petitioner’s] father’s death leaves her abandoned, neglected, and a destitute child eligible for long-term foster care. The body of law in New York regarding the issue of whether a parent’s death falls under “similar basis under state law” for SIJ S purposes is settled.

¹ Initials are used to protect the individual’s identity.

² 365 F. Supp. 3d 350 (S.D.N.Y. 2019)

In support of this finding, the amended SIJ order specifically cites New York case law, as well as sections 115(a)(iv) and 1092(a)(2)(i) of the New York Family Court Act and section 384(d) of the New York Social Services Law. As the Family Court's amended SIJ order contains a state law basis for its determination that the Petitioner is unable to reunify with her father due to abuse, abandonment, neglect, or a similar basis under state law, the record now contains a qualifying parental reunification determination.

The Family Court guardianship and SIJ orders establish the Petitioner's eligibility for SIJ classification under section 101(a)(27)(J)(i) of the Act. Overall, the Petitioner has demonstrated that USCIS' consent to a grant of SIJ classification is warranted in this matter.

II. CONCLUSION

The Petitioner's motion to reopen meets the requirements of 8 C.F.R. § 103.5(a)(2), as she has demonstrated eligibility for SIJ classification under section 101(a)(27)(J)(i) of the Act and she has otherwise met her burden to establish that she is eligible for and merits USCIS' consent to her SIJ classification. The Director's decision is therefore withdrawn, and the appeal is sustained.

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