



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

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

In Re: 10374186

DATE: MAR. 5, 2021

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 section 101(a)(27)(J) 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 (SIJ petition). The Petitioner appealed the Director's decision to our office and we dismissed the appeal (appellate decision). The matter is now before us on a motion to reopen and a motion to reconsider. Upon *de novo* review, we will deny the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner 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 petitioner's best interest to return to his or her 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 legislative history of SIJ classification and longstanding agency policy). The

Petitioner bears the burden of proof to demonstrate his or her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In our previous decision dismissing the Petitioner's appeal, we first concluded that, contrary to the Director's decision, the second amended order issued by the Massachusetts Probate and Family Court (second amended SIJ order) was issued by a "juvenile court," per 8 C.F.R. § 204.11(a), and the SIJ order contained a qualifying dependency determination. However, we then found that the SIJ order did not contain a qualifying parental reunification determination because the Petitioner did not show the state law basis for the SIJ order. We further found that USCIS' consent was not warranted because the SIJ order did not contain a qualifying parental reunification determination, and the Petitioner did not show that the SIJ order was sought for the primary purpose of obtaining relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit.

On motion, the Petitioner submits a third amended order issued by the Massachusetts Probate and Family Court and dated *nunc pro tunc* to the date of the original SIJ order (third amended SIJ order) as well as copies of fee waiver documents and a copy of a document from Health and Human Services of Massachusetts. The Petitioner argues that the third amended SIJ order contains a qualifying parental reunification determination and demonstrates that he sought the order for the primary purpose of obtaining relief from parental neglect under Massachusetts law.

A. Parental Reunification Determination

Among other eligibility requirements, the Act requires a determination that a petitioner's reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the Petitioner was subjected to such maltreatment by one or both parents under state law. *Matter of D-Y-S-C-*, Adopted Decision 2019-02. The Petitioner bears the burden of proof to establish the state law the juvenile court applied in making this determination. *Id.*

In our appellate decision, we found that the SIJ order did not establish the state law basis for the court's determination that reunification with the Petitioner's parents is not viable due to abandonment and neglect because it does not cite to Massachusetts state law. We further found that the record does not contain any additional documentation demonstrating the state law basis for the reunification finding. On motion, the Petitioner submits additional evidence showing the state law basis for the reunification finding: the third amended SIJ order issued *nunc pro tunc* to the original SIJ order. The third amended SIJ order describes the factual and legal basis in concluding that the Petitioner's parents neglected him. Accordingly, the Petitioner has met his burden in establishing that parental reunification is not viable due to neglect under state law, as required.

B. USCIS' Consent is Warranted

SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where a petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS' consent, petitioners must also establish that the requisite juvenile court or administrative determinations were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating requirement "that neither the dependency order nor the administrative or judicial determination of the [juvenile's] best interest was sought primarily for purpose of obtaining the status of an [individual] lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect")). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS' consent is warranted and the agency must consider whether the juvenile court's determinations were sought in proceedings granting relief from parental maltreatment, beyond an order with factual findings enabling an individual to file an SIJ petition with USCIS. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511, n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs agency to determine "primary purpose" of request for SIJ findings); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from SIJ petition unsupported by sufficient evidence that petitioner sought court order to obtain relief from parental maltreatment, and not primarily to obtain immigration benefit, as *USCIS Policy Manual* explained).

A juvenile court's dependency declaration, on its own, is insufficient to warrant USCIS' consent to SIJ classification absent evidence that the court issued the dependency declaration in juvenile court proceedings that actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. *Matter of E-A-L-O-*, Adopted Decision 2019-04 at 8 (AAO Oct. 11, 2019). As such, the retroactive application of section 39M does not, by itself, establish that a juvenile sought relief from parental maltreatment beyond an order enabling the juvenile to file for SIJ classification. *Id.* at 7-8. We recognize that section 39M provides for certain relief in the form of "orders necessary to protect the child against further abuse or other harm," including complaints for abuse prevention or support, as well as court-provided referrals for "psychiatric, psychological, educational, occupational, medical, dental or social services or . . . protection against trafficking or domestic violence." Mass. Gen. Laws ch. 119, §§ 39M(c)-(d). USCIS also recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS' consent, the requisite SIJ-related determinations must be made under state law in connection with proceedings granting some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law. *See Matter of E-A-L-O-*, Adopted Decision 2019-04 at 8-9; *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 7-8 (concluding that USCIS' consent was warranted where juvenile court issued SIJ-related determinations in child protection proceedings removing juvenile from abusive father's home and placing in custody of state department of family and protective services).

In the instant case, USCIS' consent is not warranted because the Petitioner has not established that his primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect,

abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit. The third amended SIJ order specifies that it was entered pursuant to section 39M to make “decisions concerning the protection, well-being, care and custody of a child, for findings, orders, or referrals to support the health, safety and welfare of a child or to remedy the effects on a child of abuse, neglect, abandonment or similar circumstances” and that the determinations were made so that the Petitioner could find “safety, a stable home, and provisions for his basic needs by his caretaker [] of which he would be deprived if he were returned to El Salvador.” However, the record does not reflect that the Court ordered any such relief or provided any referrals, or that the Petitioner was provided with any other actual protective or remedial relief under Massachusetts law apart from findings enabling him to file a SIJ petition with USCIS. The record also does not show that the Petitioner requested such relief, or any other relief, as he has not provided the underlying motion, memorandum of law, or other documentation from the underlying petition to the court, aside from the Petitioner’s affidavit that does not specify the relief requested from the Family Court. The preponderance of the evidence does not demonstrate that the Petitioner sought the juvenile court order to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, rather than primarily to obtain an immigration benefit. *See Matter of E-A-L-O-*, Adopted Decision 2019-04 at 8-9. USCIS’ consent is therefore not warranted.

III. CONCLUSION

The Petitioner’s motion to reopen does not provide sufficient new facts or documentary evidence to establish that he is eligible for and merits USCIS’ consent to his SIJ classification. The Petitioner’s motion to reconsider does not show that our prior decision was based on an incorrect application of law or policy. Therefore, the motion to reopen is denied and the motion to reconsider is denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.