



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

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

MATTER OF S-R-D-V-

DATE: DEC. 7, 2015

APPEAL OF WICHITA, KANSAS FIELD OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks classification as a special immigrant juvenile (SIJ). *See* Immigration and Nationality Act (the Act) §§ 101(a)(27)(J) and 203(b)(4), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The Field Office Director, Wichita, Kansas, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles as described in section 101(a)(27)(J) of the Act.¹ Section 101(a)(27)(J) of the Act defines a special immigrant juvenile as:

an immigrant who is present in the United States—

- (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

¹ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). *See* Section 235(d) of the TVPRA H.R. Rep. No. 105-405 at 130 (1997); *see also* Memorandum from Donald Neufeld, Acting Associate Director for Domestic Operations, USCIS, USCIS, HQOPS 70/8.5, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, 3 (Mar. 24, 2009), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf. The SIJ provisions of the TVPRA are applicable to this appeal. *See* section 235(h) of the TVPRA.

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(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act[.]

Section 101(a)(27)(J)(iii) of the Act requires the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to consent to the grant of SIJ status. This consent determination is an acknowledgement that the request for SIJ classification is *bona fide*, which means that the juvenile court order and the best interest determination were sought primarily to gain relief from parental abuse, neglect, abandonment or a similar basis under state law, and not primarily to obtain immigrant status.²

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Guatemala on [REDACTED]. He entered the United States without inspection, admission, or parole on May 27, 2013 near [REDACTED] Texas. The Petitioner was apprehended by U.S. Border Patrol during his entry and placed in the custody of the Office of Refugee Resettlement (ORR). He was released into the custody of his sister, [REDACTED] on [REDACTED] 2013. On [REDACTED] 2014, the [REDACTED] Judicial District Court, Probate Department, [REDACTED] Kansas (juvenile court), granted [REDACTED] custody over him. *See* Custody Order, Kansas [REDACTED] Jud. Dist. Ct., [REDACTED]

The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on June 20, 2014. The Director issued a request for evidence (RFE), including, among other things, a Juvenile Court Dependency Order and the record of related judicial proceedings. The Petitioner responded with previously submitted evidence. On February 10, 2015, the Director denied the Petitioner's request for SIJ classification, concluding that the juvenile court order at issue was deficient because it did not contain the requisite non-viability of parental reunification

² H.R. Rep. No. 105-405 at 130 (1997); *see also* Neufeld Memorandum, *supra*, at 3.

determination, and it lacked a reasonable factual basis for its best interest determination.³ The Petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record does not establish the Petitioner's eligibility. The Petitioner's assertions on appeal do not overcome the Director's grounds for denial and the Director's decision will be affirmed for the following reasons.

III. ANALYSIS

The relevant evidence in the record does not establish that the Petitioner is eligible for SIJ classification because the juvenile court order is deficient under section 101(a)(27)(J)(i) of the Act. The plain language of the statute requires that an SIJ petitioner demonstrate that "reunification with 1 or both of the immigrant's 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. Here, the juvenile court granted guardianship to the Petitioner's sister, but did not make the requisite non-viability of reunification determination. Additionally, although the juvenile court order includes a determination that it is not in the Petitioner's best interest to be returned to Guatemala, the Director correctly found that the order did not set forth the factual basis for that determination.

On appeal, the Petitioner asserts that the juvenile court was apprised of the reasons for his departure from Guatemala, his parents' neglect and abandonment of their parental duties by allowing him to make the "dangerous trip" to the United States alone, and why it was not in his best interest to be returned to Guatemala. He contends that he should not be penalized for the juvenile court's decision to award guardianship over him to his sister without holding a hearing on his guardianship petition and without specifically setting forth, in the juvenile court order, the requisite factual findings for the court's best interest and non-viability determinations. He maintains that the requisite findings are part of the juvenile court's order in "spirit and essence."

The Petitioner's request that we consider the requisite findings to be part of the juvenile court's order in "spirit and essence" is outside our purview in these proceedings. USCIS is not the fact finder in regards to issues of child welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. *See* Sections 101(a)(27)(J)(i)-(ii) of the Act (referencing the determinations of a juvenile court or other administrative or judicial body). Here, the juvenile court did not make a non-viability of parental reunification determination and instead granted guardianship based only on a determination that it is in the Petitioner's best interest to remain with his sister and not return to Guatemala. We are not in the position to find that the Petitioner was neglected and abandoned by his parents as that determination is under the jurisdiction of the juvenile court.⁴ Since the juvenile court order does not contain the requisite non-viability of reunification determination, it is deficient under section 101(a)(27)(J)(i) of the Act.

³ The Director also determined that the juvenile court order contains no factual findings regarding the non-viability of parental reunification ruling. Since the order does not contain a non-viability of reunification determination, we need not reach the issue of its factual findings in this decision.

⁴ *See* Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQADN 70/23,

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Moreover, the relevant evidence, including the juvenile court order, the underlying petition for guardianship, and the Petitioner's guardian's affidavit, do not establish the factual basis for the juvenile court's best interest determination, and the Petitioner's assertions that the court made factual findings to support such a determination is not sufficient. While juvenile court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS' consent, orders lacking specific factual findings are insufficient to warrant the agency's consent and must be supplemented by other relevant evidence demonstrating the factual basis for the juvenile court's order.⁵

The juvenile court order here indicates that the facts alleged in the underlying petition were found to be true, but the court does not specify the factual findings upon which it relied to support its best interest determination. The petition for guardianship by the Petitioner's parents, who reside in Guatemala, only briefly references the Petitioner's decision to leave Guatemala due to having been subjected to attacks by local gangs. Thus even though the juvenile court order indicates that the juvenile court accepted the assertions in the underlying guardianship petition as true, the petition itself does not set forth sufficient information to establish the factual basis for the court's best interest determination. Similarly, [REDACTED] describes the circumstances in the United States leading to her decision to pursue guardianship over the Petitioner, but does not discuss whether, or why, it is in the Petitioner's best interest to not to return to Guatemala. The record contains no other relevant supporting evidence. The Petitioner therefore has not established that the juvenile court's best interest determination was supported by a reasonable factual basis.

In sum, the juvenile court order is deficient as it does not contain a determination regarding the non-viability of parental reunification, and the present record lacks sufficient evidence to provide a reasonable factual basis for the juvenile court's best interest determination. Consequently, the Petitioner does not meet the requirements of section 101(a)(27)(J) of the Act and is ineligible for SIJ classification.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. The appeal is dismissed.

Memorandum #3 - Field Guidance on Special Immigrant Juvenile Status Petitions 4-5 (May 27, 2004), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

⁵ *Id.* at 5; *see also* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981, 54985 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11).

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ORDER: The appeal is dismissed.

Cite as *Matter of S-R-D-V-*, ID# 15070 (AAO Dec. 7, 2015)