



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

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

MATTER OF A-L-A-

DATE: NOV. 30, 2015

APPEAL OF CHARLOTTE FIELD OFFICE DECISION

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

The Petitioner seeks classification as a special immigrant juvenile. *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, Charlotte, North Carolina, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The matter is now before the AAO 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. 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;

(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

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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 Homeland Security, through a U.S. Citizenship and Immigration Services (USCIS) Field Office Director, to consent to the grant of special immigrant juvenile (SIJ) status. This consent determination “is an acknowledgement that the request for SIJ classification is bona fide,” meaning that neither the custody order nor the best interest determination were “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.” See Memo. from William R. Yates, Assoc. Dir. for Operations, U.S. Citizenship and Immig. Servs., to Reg. Dirs. & Dist. Dirs., *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, at 2 (May 27, 2004) (quoting H.R. Rep. No. 105-405 at 130 (1997)).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Guatemala on [REDACTED]. He entered the United States on or about February 18, 2013, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol agents after his entry near [REDACTED] Arizona, was issued a Notice to Appear in removal proceedings, and was taken into the custody of the Office of Refugee Resettlement (ORR).

On [REDACTED] 2014, the General Court of Justice, District Court Division, for [REDACTED] North Carolina (juvenile court), granted an ex parte emergency custody order to [REDACTED] whom the court identified as a family friend of the Petitioner. See *Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED].

The Petitioner filed the Form I-360 on September 16, 2014, based on the juvenile court’s findings of fact. The Director issued a notice of intent to deny (NOID) the Form I-360 petition based on a finding that the juvenile court’s order was temporary and lacked a reasonable factual basis for the finding that reunification with the Petitioner’s father was not viable. The Director stated that the juvenile court’s order incorrectly indicated that [REDACTED] was a family friend and that the Petitioner did not know the whereabouts of his parents. The Director indicated that, according to evidence in the record, [REDACTED] was the Petitioner’s stepmother and the Petitioner entered the United States to join [REDACTED] and his father. The Petitioner responded to the NOID with a brief and additional evidence, which the Director found insufficient to overcome the grounds for the intended denial. The Director denied the Form I-360 petition and the Petitioner timely appealed.

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We review these proceedings *de novo*. A full review of the record does not establish the Petitioner's eligibility. The Director's decision will be affirmed for the following reasons.

III. ANALYSIS

The Director determined that the Petitioner did not demonstrate that he is or was the subject of a qualifying juvenile court dependency or custody order because the ex parte emergency custody order only made a temporary finding that reunification with the Petitioner's mother and father was not viable. The Director further determined that the juvenile court order lacked a reasonable factual basis for the nonviability-of-reunification determination because evidence in the record indicated that the Petitioner entered the United States to join his father and [REDACTED] who was his stepmother.

On appeal, the Petitioner contends that the ex parte emergency custody order was not temporary, but instead had "the full weight of a final custody order and remains in effect until it is replaced by another order." He asserts that the ex parte emergency custody order terminated only because the Petitioner reached the age of 18, not because it was replaced by another order.

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." Section 101(a)(27)(J)(i) of the Act. Here, the juvenile court awarded [REDACTED] the "care, custody, and control" of the Petitioner on [REDACTED] 2014, subject to another hearing on [REDACTED], 2014. Therefore, the juvenile court's finding of nonviability-of-reunification with the Petitioner's mother and father was issued on a temporary basis, subject to a redetermination hearing only six days later. Although the Petitioner did not turn [REDACTED] until [REDACTED] the record does not indicate whether the [REDACTED] 2014 hearing occurred, or, if it did occur, what the juvenile court determined at that hearing. The juvenile court's determination on [REDACTED] 2014 was temporary, and does not establish that "family reunification is no longer a viable option," because the Petitioner has not shown that the court ultimately granted permanent custody to [REDACTED]. See Section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPA 2008), Pub. L. 110-457 (providing that a court-appointed custodian who is acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility).

The Petitioner asserts that, under North Carolina's dependency law, there is no single factor that determines whether an order is temporary or permanent, nor are there specific limits on the validity period of a temporary order. The Petitioner further contends that, even if the ex parte order was temporary, the North Carolina Court of Appeals held under *LaValley v. LaValley*, 564 S.E.2d 913 (N.C. App. Ct. 2002), that an unappealed temporary custody order converts into a permanent order at "some point in time." However, an order is temporary in North Carolina "if either (1) it states a clear and specific reconvening time in the order and the time interval between the two hearings was reasonably brief; or (2) the order does not determine all issues." See *Lamond v. Mahoney*, 583 S.E.2d 656, 659 (N.C. App. Ct. 2003) (citing *Brewer v. Brewer*, 533 S.E.2d 541, 546 (N.C. App. Ct. 2000)). In *LaValley*, the Court of Appeals stated that "[a] temporary order is not designed to remain

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in effect for extensive periods of time or indefinitely . . . and must necessarily convert into a final order if a hearing is not set within a reasonable time.” See 564 S.E.2d 913, 915 n.5. The Court of Appeals emphasized that “[w]e are careful to use the words ‘set for hearing’ rather than ‘heard’ because we are aware of the crowded court calendars in many of the counties of this State.” *Id.* In this case, on the day the juvenile court issued the ex parte emergency custody order, it also set a hearing date for six days later. The interval between the two hearing dates was short and the second hearing was scheduled for [REDACTED] 2014, prior to when the Petitioner turned 18, and there is no evidence in the record that the juvenile court granted permanent custody of the Petitioner to [REDACTED] at the subsequently scheduled hearing.

Additionally, the Petitioner asserts that the *Perez-Olano* Settlement Agreement prohibits USCIS from denying his petition on the basis that the juvenile court’s jurisdiction expired when he turned 18 years old. See *Perez-Olano v. Holder*, No. CV 05-3604, (C.D. Cal. 2005) (Settlement Agreement). The Petitioner contends that he remains eligible for SIJ classification as long as he was subject to a valid dependency order that subsequently terminated based only on age. The Settlement Agreement prevents USCIS from denying or revoking the approval of certain SIJ petitions based on age or dependency status if the petitioner was less than 21 years of age and the subject of a valid juvenile court dependency order at the time the petition was filed. See Settlement Agreement at 7-8. Here, the Director did not deny the SIJ petition because the Petitioner “aged out” of the juvenile court’s jurisdiction after he turned 18 years of age. See N.C. Gen. Stat. Ann. § 48A-2 (West 2015) (defining a minor as “any person who has not reached the age of 18 years.”). Instead, the Director denied the petition because the Petitioner is the subject of a temporary custody order that does not contain the requisite nonviability-of-reunification determination under section 101(a)(27)(J)(i) of the Act.

The Director also noted that, when the Petitioner entered the United States, he informed officials that his father and stepmother, whom he identified as [REDACTED], resided together in North Carolina at an address on [REDACTED] and that he intended to join them there. The Director also indicated that the Petitioner listed the [REDACTED] address as his current address on his Form I-360. Therefore, the Director concluded that the juvenile court order was inconsistent with other evidence in the record regarding the Petitioner’s relationship with his father and his ability to be reunified with him.

The consent determination under section 101(a)(27)(J)(iii) of the Act 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. H.R. Rep. No. 105-405 at 130; see also Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs., et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, p. 3 (Mar. 24, 2009). When adjudicating an SIJ petition, USCIS examines the juvenile court order only to determine if it contains the requisite findings of dependency or custody; nonviability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner’s best interests, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. USCIS is not the fact finder in regards to these issues of child

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welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. Section 101(a)(27)(J)(i)-(ii) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (referencing the determinations of a juvenile court or other administrative or judicial body). Accordingly, USCIS examines the relevant evidence only to ensure that the record contains a reasonable factual basis for the juvenile court's order. *See Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, at 4-5 (stating that, where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the juvenile court's rulings).

On appeal, the Petitioner asserts that he has provided a reasonable explanation for the perceived inconsistency between the juvenile court order and the Petitioner's statements upon entering the United States. He references a statement he submitted in response to the NOID, in which he claimed that, at the time he entered the United States, he believed his father resided with [REDACTED] and intended to join them. He explained that, when he arrived at [REDACTED] home, he realized that his father no longer lived there. However, according to the Petitioner, [REDACTED] is the mother of the Petitioner's brother, so the Petitioner considers [REDACTED] to be his mother as well because he has no other family in the United States. He stated that [REDACTED] decided to take care of him. The Petitioner also submitted, in response to the NOID, a letter from [REDACTED] who stated that her relationship with the Petitioner's father, [REDACTED] had ended. She asserted that she and [REDACTED] had a son together, and resided together for two years beginning in 2004, but they did not marry. She recounted that [REDACTED] abused her and used drugs. She stated that [REDACTED] went to jail and that they lived together again after he was released, but that [REDACTED] again exhibited problems relating to drug use, so [REDACTED] left him. She indicated that she "saw him a few times over the next two or three years," but was not in a relationship with him. According to [REDACTED] [REDACTED] was deported to Guatemala and she had not seen him since then. She explained that she was surprised when the Petitioner contacted her, but that she wants to help him because he is her son's brother.

The statements of the Petitioner and [REDACTED] credibly describe the relationship between [REDACTED] and indicate that the Petitioner did not join his father at [REDACTED] home. There is no other evidence in the record that the Petitioner resided with or had any contact with his father in the United States, or that [REDACTED] has been in a relationship with [REDACTED] since the Petitioner arrived. Furthermore, USCIS records indicate that [REDACTED] was deported to Guatemala in November 2012, prior to the Petitioner's arrival in the United States. Therefore, to the extent that the Director found that there was no reasonable factual basis for the juvenile court's finding that reunification of the Petitioner with his father was not viable, that portion of the Director's decision is withdrawn. However, because the Petitioner is the subject of a temporary ex parte emergency custody order, he cannot establish eligibility for SIJ status.

IV. CONCLUSION

The Petitioner did not establish that he was the subject of a qualifying juvenile court custody order. Consequently, the Petitioner does not meet the requirement at section 101(a)(27)(J)(i) of the Act and the petition will remain denied.

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

ORDER: The appeal is dismissed.

Cite as *Matter of A-L-A-*, ID# 15462 (AAO Nov. 30, 2015)