



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

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

MATTER OF C-D-G-R-

DATE: OCT. 6, 2015

APPEAL OF CHARLOTTE, NORTH CAROLINA 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 petition. 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.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, USCIS, *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.

(b)(6)

Matter of C-D-G-R-

(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[.]

II. FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in El Salvador on [REDACTED]. He entered the United States without inspection, admission, or parole in April 2014 near [REDACTED] Texas. On [REDACTED] 2014, the General Court of Justice District Court Division, [REDACTED] (juvenile court) granted the Petitioner's sister custody over him. *See Consent Order Regarding Permanent Child*, Dist. Ct. Div., [REDACTED]. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on November 14, 2014. The Director issued a notice of intent to deny the petition (NOID) and on January 30, 2015, the Director denied the Petitioner's request for SIJ classification because the juvenile court order did not contain the requisite best interest determination and because the record lacked a reasonable factual basis for the nonviability of reunification ruling. The Petitioner timely appealed.

III. ANALYSIS

The Director incorrectly determined that the juvenile court order does not contain the requisite ruling regarding nonviability of reunification with one or both of the Petitioner's parents. The juvenile court order states that the Petitioner "has fallen into a situation of abandonment" since his parents "cannot provide him with proper care, proper education and financial stability to continue with his well-being." It further states that the best interests of the Petitioner "would be served if their sole permanent legal and physical care, custody and control" were awarded to the Petitioner's sister, [REDACTED] with whom the Petitioner resides in North Carolina. To the extent that the Director indicated that the juvenile court order does not contain the requisite ruling regarding nonviability of reunification with one or both of the Petitioner's parents, that portion of the decision is withdrawn. Nonetheless, the Director's ultimate conclusion that the record does not provide a reasonable, factual basis for the nonviability determination is correct.

(b)(6)

Matter of C-D-G-R-

Subsection 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 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 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 court's order.³

Here, the record does not provide a reasonable factual basis for the juvenile court's ruling that the Petitioner was abandoned by his parents. The record shows that the juvenile court order granting custody of the Petitioner to his sister, [REDACTED] was consented to by both of his parents. The juvenile court order further states that the Petitioner has been abandoned but does not state a basis for this determination other than to mention that his parents "cannot provide him with proper care, proper education and financial stability to continue with his well-being." The Director concluded that the Petitioner sought the juvenile court order primarily to obtain lawful permanent residency in the United States rather than to gain relief from his parents' abandonment and issued a NOID.

In response, the Petitioner submitted a personal affidavit and an affidavit from [REDACTED] who stated that she filed for custody of the Petitioner so that he would be safe and she could provide for him. [REDACTED] explained that the Petitioner called her from El Salvador and told her that their parents had abandoned him because they could not provide for his basic needs. In his affidavit, the Petitioner stated that his parents knew that they could not provide for his "food, education and security" and that they abandoned him. However, the record does not show whether [REDACTED] and the Petitioner's statements were taken into consideration by the juvenile court or what other evidence, if any, was considered.

The Director also correctly determined that the juvenile court order does not address whether or not it would be in the Petitioner's best interest to return to El Salvador and that there is not a reasonable

² H.R. Rep. No. 105-405 at 130 (1997). *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).

³ *See* USCIS Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions, 4-5 (May 25, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

(b)(6)

Matter of C-D-G-R-

factual basis for such a ruling. The record contains a personal affidavit from the Petitioner, an affidavit from his sister, [REDACTED], and a Department of State Travel Warning for El Salvador that were submitted in response to the NOID. In his affidavit, the Petitioner stated that, as he grew into his teenage years, it became increasingly difficult for his parents to provide for his basic needs as well as for his education. He also recounted that near his house, children were killed for refusing to join a gang.

[REDACTED] stated that her parents had a difficult time raising their children and that the Petitioner communicated to her that he had been abandoned. She stated that he could come to her house since he had no place to go. She further stated that returning to El Salvador would be detrimental to the Petitioner because he did not have the minimum means necessary for everyday life and because of the gang situation in his neighborhood. The Travel Warning advises against travel to El Salvador due to the crime levels in El Salvador as a result of gang violence. Although this evidence indicates the dangers of travel to El Salvador, it does not show that the juvenile court made a determination whether or not it is in the Petitioner's best interest to be returned to his country of nationality or country of last habitual residence pursuant to section 101(a)(27)(J)(i) of the Act. Consequently, the present record does not support the consent of USCIS to a grant of SIJ classification in this case, as required by section 101(a)(27)(J)(iii) of the Act.

IV. CONCLUSION

In this case, as in all visa petition proceedings, the Petitioner bears the burden of proof to establish his 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 that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-D-G-R-*, ID# 14278 (AAO Oct. 6, 2015)