



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

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

MATTER OF J-R-C-N-

DATE: OCT. 6, 2015

APPEAL OF ST. LOUIS, MISSOURI 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, St. Louis, Missouri, denied the petition. The matter is now before the AAO on appeal. The decision of the Director will be withdrawn and the petition will be remanded to the Director for further action.

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.

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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[.]

II. FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Honduras on [REDACTED]. He entered the United States without inspection, admission, or parole on June 28, 2013, near [REDACTED] Texas and was apprehended at the border by Border Patrol Agents. On [REDACTED] 2014, the Circuit Court of the [REDACTED] Missouri (juvenile court) granted the Petitioner's mother custody over him. *See Custody Order*, Mo. Cir. Ct. Div. 14 Case No. [REDACTED]. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on September 2, 2014. The Director issued a notice of intent to deny the petition (NOID) and on February 25, 2015, the Director denied the Petitioner's request for SIJ classification because the Petitioner did not establish that his request for SIJ classification is *bona fide* and merits consent by U.S. Citizenship and Immigration Services (USCIS). The Director also determined that the record did not provide a reasonable factual basis for the requisite nonviability of reunification and best interest determinations. The Petitioner timely appealed.

III. ANALYSIS

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of the Department of Homeland Security, through 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

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).

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

In this case, the Director erroneously determined that the Petitioner's request for SIJ classification was not *bona fide*. While the Director stated in the Form I-360 denial that "determining abuse, neglect, or abandonment (or similar basis) is not a determination for USCIS," he nonetheless disputed the juvenile court's determination. The Director relied on an interview of the Petitioner conducted by a Border Patrol Agent when the Petitioner was apprehended at the border and the Petitioner's juvenile court proceedings testimony. The Border Patrol Agent memorialized the interview on Form I-213, Record of Deportable/Inadmissible Alien, and Form I-831, which are continuation pages for the Form I-213. The Director stated that the Petitioner indicated to the Border Patrol Agent that he was traveling to the United States to be reunited with his mother and did not "claim to fear persecution or torture" if returned to Honduras. The Director further noted that the Petitioner claimed at the time interview by the Border Patrol Agent to have been residing with his father prior to traveling to the United States, which contradicts his subsequent statements made before the juvenile court. The Director concluded that the juvenile court order was not sought, therefore, to alleviate the Petitioner's father's abandonment, but instead was sought primarily to secure immigrant status in the United States.

On appeal, the Petitioner asserts that extenuating circumstances regarding the Petitioner's age and interview conditions after his apprehension by the Border Patrol Agent should give the interview less weight. The Petitioner further asserts that the Director improperly and incorrectly questioned the underlying basis for the juvenile court order in determining that the Petitioner's request for SIJ classification did not merit agency consent. A review of the administrative record contains no basis for the Director to have looked behind the juvenile court order to conclude that the SIJ request was not *bona fide*. The Form I-213 is not a complete record of the interview conducted by the Border Patrol Agent but, instead, is a summary of the Border Patrol Agent's encounter with the Petitioner. In addition, in response to the NOID, the Petitioner submitted a personal affidavit explaining that he did not tell the Border Patrol Agent that he lived with his father and that she must have misunderstood him. He further described feeling hungry and tired at the interview and remembers telling the Border Patrol Agent that he came to the United States because he could not live with his father. As the information included in the Form I-213 and Form I-831 is a summarization and not a

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).

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transcript of the interview, it is not clear that the questions asked and answered were sufficient to determine eligibility for SIJ classification. Accordingly, the Director erroneously relied on the Form I-213 and Form I-831 to question the *bonafides* of the Petitioner's SIJ request.

In addition, the juvenile court order contains the requisite determinations: that the Petitioner was adjudged, under the applicable state law, abandoned by his father; that reunification with his father was not viable due to such abandonment, that it was not in the Petitioner's best interest to return to Honduras; and that custody was awarded to his mother. The record also provides a reasonable factual basis for the juvenile court order. The transcripts of the juvenile court proceedings show that the Petitioner testified to being thrown out of his father's home at the age of [redacted] or [redacted] years old. He further testified that his father has not supported him since that time nor has the Petitioner had any contact with him. The Petitioner stated that he cannot go back to Honduras because he has nowhere else to go. The juvenile court, taking the Petitioner's testimony into consideration, made the requisite SIJ rulings. The Petitioner's personal affidavit further provides additional details regarding the Petitioner's abandonment by his father. The letters from the Petitioner's former teacher and his older brother, though brief, confirm details regarding the Petitioner's living situation in Honduras and his travel to the United States. Accordingly, the Director's determination that the record did not provide a reasonable factual basis for the juvenile court's order is withdrawn.

The Form I-360 is not approvable, however, because the juvenile court order is deficient. The Petitioner has not established that he is eligible for SIJ classification which requires that he be declared a dependent upon a juvenile court located in the United States in accordance with state law. Section 475.010 of Missouri Statutes defines a minor as "any person who is under the age of eighteen years." In this case, the Petitioner was [redacted] years old at the time of the juvenile court proceedings and, therefore, was not a minor under Missouri law. The juvenile court order does not cite to any exception supporting its jurisdiction over the Petitioner. Accordingly, the guardianship order does not meet the requirements of subsection 101(a)(27)(J)(i) of the Act as implemented by the regulation at 8 C.F.R. § 204.11(c)(3).

The Director's February 25, 2015, decision was based on the ground that the Petitioner's request was not *bona fide* and that the record did not provide a reasonable factual basis for the requisite nonviability of reunification and best interest determinations. These grounds for denial have been overcome, but the Petitioner remains ineligible for SIJ classification because the juvenile court order dated July 15, 2014, is deficient and fails to establish the juvenile court's jurisdiction over the Petitioner. Because the Director did not address this deficiency in his decision, the matter must be remanded to the Director for further action, such as issuance of a Request for Evidence (RFE), to provide the Petitioner with the opportunity to address the remaining deficiencies of record.

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). Although the Petitioner has overcome the Director's grounds for denial, he

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remains ineligible for SIJ classification on other grounds. Accordingly, the Director's decision will be withdrawn and the matter will be remanded to the Director for further action in accordance with the preceding discussion. The Director shall then issue a new decision, which shall be certified to the AAO if adverse to the Petitioner.

ORDER: The matter is remanded to the Field Office Director, St. Louis, Missouri, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of J-R-C-N-*, ID# 14251(AAO Oct. 6, 2015)