



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

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

MATTER OF W-L-

DATE: OCT. 7, 2015

APPEAL OF CLEVELAND, OHIO 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, Cleveland, Ohio, 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. 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 Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(b)(6)

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(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 China on [REDACTED] and is currently [REDACTED] years old. The Petitioner claims that he entered the United States without inspection, admission, or parole on July 4, 2012. On October 7, 2013, when the Petitioner was [REDACTED] years old, the Probate Court in [REDACTED] Ohio (juvenile court) granted the guardianship of the Petitioner to his aunt, [REDACTED]. See Order for Findings on Minor's Special Immigrant Juvenile Status, Prob. Ct. of [REDACTED] Ohio, [REDACTED]. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on November 14, 2013. On November 14, 2014, the Petitioner was interviewed at the Cleveland Field Office in relation to the Form I-360. The Director then issued a notice of intent to deny (NOID) the petition because the Petitioner did not demonstrate that the primary purpose of filing his Form I-360 was to escape from abuse, abandonment, or neglect by his parents and that his request for special immigrant classification warranted consent by U.S. Citizenship and Immigration Services (USCIS). The Director found the Petitioner's response to the NOID insufficient and denied the petition. 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 grounds for denial and the appeal will be dismissed for the following reasons.

## III. ANALYSIS

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.<sup>1</sup> 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

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<sup>1</sup> 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).

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.<sup>2</sup>

Although the juvenile court order in this case includes the requisite nonviability-of-reunification and best-interest determinations, the record does not provide a reasonable factual basis for the juvenile court's determination that the Petitioner was abandoned by his parents. In addition to the juvenile court order, the Petitioner submitted a Motion for Findings on Special Immigrant Juvenile Status (motion for findings) filed on his behalf with the juvenile court with an attached copy of his Form I-589, Application for Asylum and for Withholding of Removal and personal affidavit in support of the Form I-589. The Petitioner also submitted a Waiver of Notice and Consent to the appointment of his aunt as his guardian from the Petitioner's parents. The motion for findings states that the Petitioner's parents abandoned him by arranging for his escape from China, and that "it would not be viable to return him to China to be reunited with his parents due the fear of religious persecution."

In the Petitioner's Form I-360 interview and in the brief submitted in response to the NOID, the Petitioner stated that his parents paid smugglers who then arranged for his entry into the United States. In his response to the NOID, the Petitioner also submitted an affidavit indicating that his parents have only contacted him twice by telephone since he came to the United States and they have not visited him since he left China. 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. The Director further determined that the Petitioner's request for SIJ classification is not *bona fide* because he submitted a proposed order containing the requisite language to the juvenile court.

The Petitioner bears the burden of proof to establish that his request for SIJ classification is *bona fide* and merits the agency's consent. The Petitioner must show that he sought the juvenile court order primarily to obtain relief from his parents' abuse, neglect, or abandonment, and not primarily to gain lawful permanent residency. H.R. Rep. No. 105-405 at 130 (1997); *see also TVPRA – SIJ Provisions Memo* at 3; *SIJ Memo #3* at 2. On appeal, the Petitioner asserts that by sending the Petitioner to the United States by himself, he was abandoned by his parents and is applying for SIJ classification to gain relief from that abandonment. The Petitioner further asserts that it was necessary to provide a proposed order to the juvenile court because, in guardianship proceedings, the juvenile court does not normally make nonviability of reunification and best interest determinations. To the extent that the Director indicated that the Petitioner's request for SIJ classification was not *bona fide* because he provided a proposed order to the juvenile court, that portion of the Director's decision is withdrawn.

Nonetheless, the Director's ultimate determination is correct. Although the Petitioner received the requisite juvenile court order, material evidence does not support the juvenile court's finding of

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<sup>2</sup> 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).

parental abandonment. Here, the record shows that the Petitioner's parents arranged for his travel to the United States to reside with his aunt out of concern for his safety due to religious persecution in China. On appeal, the Petitioner reasserts that the Form I-589 affidavit considered by the juvenile court demonstrates his claim of parental abandonment. The affidavit submitted with the Form I-589, however, states that the Petitioner's family worried about him and arranged to send him to the United States, a country that protects religious freedom. The present record as supplemented on appeal demonstrates that the Petitioner sought the juvenile court order primarily to obtain lawful permanent residency in the United States and protection from country conditions in China, and not to obtain relief from his parents' abandonment. 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.

### III. 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. Accordingly, the Director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.

Cite as *Matter of W-L-*, ID# 14140 (AAO Oct. 7, 2015)