



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

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

MATTER OF A-H-C-

DATE: OCT. 22, 2015

APPEAL OF HARLINGEN, TEXAS 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, Harlingen, Texas, denied the petition. The matter is now before the AAO on appeal. The appeal will be sustained.

**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.<sup>1</sup> 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;

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<sup>1</sup> 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](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 Mexico on [REDACTED] and is currently [REDACTED] years old. The Petitioner claims that she entered the United States without inspection, admission, or parole, in March 2009. On August 14, 2014, when the Petitioner was [REDACTED] years old, the District Court of the 107th Judicial District in [REDACTED] Texas (juvenile court) declared the Petitioner to be dependent on the juvenile court. *See* Order of Dependency and Findings, 107th Dist. Ct. of [REDACTED] Tex., No. [REDACTED]. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on September 17, 2014. The Director issued a request for evidence (RFE) to establish that the Petitioner's request for SIJ classification is *bona fide*. The Director found the Petitioner's response insufficient and denied the Petitioner's request for SIJ classification on April 1, 2015. The Petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record establishes the Petitioner's eligibility. The Petitioner's assertions on appeal overcome the grounds for denial and the Director's decision will be withdrawn. The appeal will be sustained 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 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>2</sup> When adjudicating an SIJ petition, USCIS examines the juvenile court order only

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<sup>2</sup> H.R. Rep. No. 105-405 at 130 (1997). *See also* Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and

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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 juvenile court's order.<sup>3</sup>

In this case, the Director erroneously determined that the Petitioner's request for SIJ classification was not *bona fide*. The Director stated that "after a careful review of the law and the facts of this case," the Petitioner's request for SIJ classification was not sought to alleviate the Petitioner's abandonment by her parents, but was instead sought primarily to secure immigrant status in the United States. On appeal, the Petitioner asserts that the juvenile court order underlying a request for SIJ classification should not be sought primarily to obtain lawful permanent resident status but that this may be a secondary goal. The Petitioner further asserts that "USCIS is allowed a very limited review of the underlying state court order."

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 juvenile court order contains the requisite determinations: that the Petitioner was adjudged, under the chapter 261.001(4) of the Texas Family Code, neglected by her parents; that reunification with her parents is not viable due to such neglect; that it is not in the Petitioner's best interest to return to Mexico; and that the Petitioner was adjudged to be dependent on the court.<sup>4</sup> In addition, the record provides a reasonable factual basis for the juvenile court order. The Original Petition for Declaratory Judgment states that the Petitioner's parents are deceased and that she suffered from domestic violence in her home when they were alive.

In her personal affidavit also submitted to the juvenile court, the Petitioner stated that her relationship with her parents was physically abusive. She stated that her mother died when the Petitioner was ■ years old. The Petitioner recounted that, after her mother's death, her father no longer wanted to take care of her and sent her away to live with her sister. She stated that he did not provide any financial support and she had very little contact with him. The Petitioner stated that she later found out that her father died of kidney failure approximately one year after he sent her away and that there is no one else that can take care of her in Mexico. The juvenile court, taking in

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Immig. Servs., et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, p. 3 (Mar. 24, 2009).

<sup>3</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).

<sup>4</sup> The juvenile court order states that the Petitioner has been subjected "parental abuse, and/or abandonment, and/or neglect as those terms are defined under Chapter 261.001(4) of the Texas Family Code." Although the order was not specific, Chapter 261.001(4) pertains to the definition of neglect.

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account the Original Petition for Declaratory Judgment and the Petitioner's detailed affidavit, made the requisite SIJ rulings. Our review of the record demonstrates the *bona fides* of the Petitioner's request for special immigrant juvenile classification. Accordingly, the Petitioner has established her eligibility for SIJ classification pursuant to section 101(a)(27)(J) of the Act.

### III. CONCLUSION

In this case, as in all visa petition proceedings, the Petitioner bears the burden of proof to establish her 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 been met. Accordingly, the Director's decision will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained.

Cite as *Matter of A-H-C-*, ID# 14684 (AAO Oct. 22, 2015)