



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

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

MATTER OF G-S-F-L-

DATE: OCT. 22, 2015

APPEAL OF RENO, NEVADA FIELD OFFICE DECISION

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

The Petitioner seeks classification as a special immigrant juvenile (SIJ). 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, Reno, Nevada, 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. 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

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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 El Salvador on [REDACTED], and is currently [REDACTED] years old. The Petitioner claims that she entered the United States without inspection, admission, or parole in October 2011. On August 6, 2013, when the Petitioner was [REDACTED] years old, the First Judicial District Court, [REDACTED] Nevada, (juvenile court) granted guardianship of the Petitioner to [REDACTED]. *See* Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status, First Jud. Ct. [REDACTED] Nevada, No. [REDACTED]. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on September 27, 2013. The Director then issued a request for evidence (RFE) of the reasonable factual basis on which the juvenile court order was based. The Director found the Petitioner's response to the RFE insufficient and denied the petition. 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 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 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 a 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>2</sup>

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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).

<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).

(b)(6)

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In this case, the Director erroneously determined that the Petitioner's request for SIJ classification was not *bona fide*. While the Director stated in his decision that "the Service is not questioning the Court's finding of abuse, neglect or abandonment," he nonetheless disputed the juvenile court's determination. The Director concluded that the juvenile court order was not sought 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 the record contains no basis for the Director to have looked behind the juvenile court order to conclude that the request for SIJ classification was not *bona fide*.

The juvenile court order in this case contains the requisite determinations: that the Petitioner was adjudged, under the applicable state law, abandoned by her father; that reunification with her father was not viable due to such abandonment, that it was not in the Petitioner's best interest to return to El Salvador; and that custody was awarded to her guardian. Further, the record contains a reasonable factual basis for the juvenile court order. The record contains the juvenile court order, an Order for Permanent Guardianship, Letters of Full Guardianship, an Amended Petition for Guardianship of a Minor Child, the Motion for Factual Findings Permitting the Minor Child's Application for Special Immigrant Juvenile Status (Motion for Factual Findings), an affidavit from the Petitioner's guardian, [REDACTED] and an affidavit from the Petitioner's mother, [REDACTED].

The Amended Petition for Guardianship of a Minor Child (Amended Petition), filed with the juvenile court on [REDACTED] 2013, states that reunification of the Petitioner with her father is not viable due to his neglect and abandonment. The Amended Petition further states that it is not in the best interest of the Petitioner to be returned to El Salvador but, rather, that is in her best interest that she stay with [REDACTED] who provides her a loving and nurturing environment. The Motion for Factual Findings, filed with the juvenile court on July 15, 2013, states that, prior to arriving in the United States, the Petitioner lived with her maternal grandmother. The Motion for Factual Findings further states that the Petitioner's father has never cared for nor supported the Petitioner financially. The Motion for Factual Findings states that he has never sought to have a relationship with or custody of the Petitioner, and that when the Petitioner's grandmother's diabetic condition worsened, there was no one else who could care for the Petitioner in El Salvador. The Motion for Factual Findings states that the Petitioner is unable to reunite with her father because he abandoned her pursuant to Nevada statute section 128.012 which defines abandonment of a child as a parent leaving the child "in the care and custody of another without provision for the child's support and without communication for a period of 6 months." In her affidavit, the Petitioner's mother stated that the Petitioner has never met her biological father and that the Petitioner's grandmother is no longer able to care for the Petitioner due to health problems and that there is no one else who can care for her in El Salvador.

Here, the Petitioner has shown by a preponderance of the evidence that her request for SIJ classification is *bona fide* because she sought the juvenile court order primarily to obtain relief from her father's abandonment. The juvenile court order contains all the requisite determinations and the record provides a reasonable factual basis for the juvenile court's order. Accordingly, the Petitioner

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is eligible for and merits special immigrant juvenile classification. The Director's decision to the contrary shall be withdrawn.

### 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 G-S-F-L-*, ID# 14486 (AAO Oct. 22, 2015)