



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

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

MATTER OF K-R-S-G-

DATE: SEPT. 2, 2015

APPEAL OF NEWARK, NEW JERSEY 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 (INA, or 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, Newark, New Jersey, denied the petition. The matter is now before us on appeal. The appeal is dismissed.

The Director denied the petition based on the determination that the Petitioner failed to establish that she is subject to a qualifying juvenile court order which contains the requisite nonviability-of-reunification determination. On appeal, the Petitioner submits a brief and additional evidence.

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. *See* 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—

(b)(6)

(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[.]

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.¹ 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.²

II. PERTINENT FACTS

The Petitioner was born in El Salvador on [REDACTED]. The Petitioner entered the United States on or about June 16, 2013, without inspection, admission, or parole. She was apprehended by U.S. Border Patrol agents at the time of her entry near [REDACTED] Texas, was issued a Notice to Appear in removal proceedings, and was taken into custody of the Office of Refugee Resettlement (ORR). On July 28, 2013, the Petitioner was released from ORR custody to her mother, [REDACTED]. On [REDACTED] when the Petitioner was [REDACTED] years old, the Superior Court of [REDACTED] – Family Part, [REDACTED] (juvenile court) granted her mother custody over the Petitioner. *See Custody Order*, N.J. Super. Ct. Ch. Div., No. [REDACTED] ([REDACTED]). The Petitioner filed this Form I-360, Petition for Special Immigrant, on July 7, 2014. The Director denied the Form I-360 petition and the Petitioner timely appealed.

¹ 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.

² *See* Memorandum from William R. Yates, USCIS, *No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, 4-5 (May 27, 2004), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf (indicating that, where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

(b)(6)

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 Director's grounds for denial. The Director's decision will be affirmed for the following reasons.

III. ANALYSIS

To be eligible for SIJ classification, the Petitioner must be the subject of a juvenile court order finding that reunification with one or both of her parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required by subsection 101(a)(27)(J)(i) of the Act. The Director determined that the Petitioner did not demonstrate that she is or was the subject of a qualifying juvenile court dependency or custody order because the order did not include the requisite non-viability of reunification determination. The juvenile court granted custody to the Petitioner's mother holding that reunification was not possible with the Petitioner's father due to his death. The juvenile court specifically declined, however, to make a nonviability-of-reunification determination based on abuse, neglect, or abandonment. *See Custody Order*, N.J. Super. Ct. Ch. Div., No. [REDACTED] ([REDACTED]) (stating that, "reunification with [the Petitioner's] father . . . is not viable because he is deceased."). The transcript of the juvenile court proceedings show that the court did not find "that there was abuse, neglect or abandonment, because as a deceased individual [the Petitioner's father] is incapable of having any kind of custodial custody." *Transcript of Motion*, N.J. Super. Ct. Ch. Div., No. [REDACTED] 46 ([REDACTED]). The juvenile court further determined that the Petitioner's mother did not abuse, neglect, or abandon the Petitioner. *Id.*

On appeal, the Petitioner asserts that the Director erred by denying the petition without first issuing an RFE. However, neither the statute nor the regulations governing SIJ classification require the issuance of an RFE where eligibility has not been established. According to the regulation at 8 C.F.R. § 103.2(b)(8)(iii), "[i]f all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the benefit request for ineligibility" Here, the Director properly exercised discretion and denied the Form I-360 without first issuing an RFE because the Petitioner did not establish eligibility for the benefit sought.

In addition, on appeal, the Petitioner states that, notwithstanding the juvenile court's determination that the Petitioner was not abused, abandoned, or neglected, the juvenile court order nonetheless contains the requisite nonviability determination. The Petitioner asserts that as a result of her father's death, the juvenile court determined that the Petitioner fits the category of "other similar basis" and granted custody of the Petitioner to her mother pursuant to New Jersey statute 9:2-5. An SIJ petitioner bears the burden of proof to establish that the basis for a juvenile court's non-viability finding is similar to abuse, neglect or abandonment under a particular state's law. *See* Sections 101(a)(27)(J)(i) and 291 of the Act, 8 U.S.C. §§ 1101(a)(27)(J)(i), 1361.³ In making this determination, USCIS may consider whether the nature and elements of the state law are similar to the nature and elements of abuse, abandonment, or neglect pursuant to subsection 101(a)(27)(J)(i) of the Act. *See* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981 (Sept. 6, 2011). Other significant factors include whether the state treats such children similarly to those adjudicated

³ *See* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981 (Sept. 6, 2011) (to be codified at 8 C.F.R. pts. 204, 205, and 245) (explaining that the analysis requires a case-by-case determination given the variations in state laws).

abused, abandoned or neglected in regards to their eligibility for legal protection or other state services; and evidence regarding the conduct which resulted in the petitioner's need for a dependency or custody order. *Id.* Here, the juvenile court found that the death of the Petitioner's father constituted a basis under state law for non-viability of reunification, but did not specify any applicable state laws that are similar to the nature and elements of abuse, abandonment, or neglect pursuant to the Act. In the court transcripts, the court references section 9:2-5 of New Jersey law which requires that a custody hearing be held when a custodial parent dies. The record below and as supplemented on appeal does not establish that in New Jersey, a custodial determination under section 9:2-5 is similar to guardianship proceedings of children adjudged to be abused, abandoned, or neglected.

The Petitioner is correct that the USCIS is not the fact finder in regards to issues of child welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. *See* Sections 101(a)(27)(J)(i)-(ii) of the Act (referencing the determinations of a juvenile court or other administrative or judicial body). As the juvenile court order specifically states that the Petitioner was not abused, abandoned, or neglected by either of her parents and does not indicate the applicable state law that constitutes a similar basis, the order is deficient because it fails to comply with section 101(a)(27)(J)(i) of the Act.

IV. CONCLUSION

In these 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 not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of K-R-S-G-*, ID # 13023 (AAO Sept. 2, 2015)]