



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

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

MATTER OF J-C-C-

DATE: SEPT. 24, 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 us 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.

(b)(6)

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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. RELEVANT 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 he entered the United States without inspection, admission, or parole, at an unknown time. On [REDACTED] 2001, when the Petitioner was [REDACTED] years old, the District Court of the 103rd Judicial District in [REDACTED] Texas (juvenile court) granted the Petitioner's adoption by his guardian, [REDACTED]. On [REDACTED] 2013, over twelve years later, the juvenile court declared the Petitioner to be a dependent upon the juvenile court. *See* Order of Dependency and Findings, Dist. Ct. of [REDACTED] [REDACTED] [REDACTED], 2013).<sup>2</sup> The Petitioner was [REDACTED] years old at the time. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on January 22, 2014. The Director denied the petition because the Petitioner did not demonstrate that the primary purpose of filing the Form I-360 was to escape from abuse, abandonment, or neglect because the juvenile court order referred to his biological parents but did not make a nonviability of reunification determination with his adoptive parents. The Director further determined that the Petitioner did not establish that his request for special immigrant classification warranted consent by U.S. Citizenship and Immigration Services (USCIS). 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.

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<sup>2</sup> The Petition for Declaratory Judgment Regarding Special Immigrant Juvenile Status was filed May 28, 2013, when the Petitioner was a minor but the juvenile court order was issued after the Petitioner's [REDACTED] birthday.

(b)(6)

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### III. ANALYSIS

On appeal, we find that the Director erred in finding that the Petitioner was precluded from SIJ eligibility because he had been orphaned and subsequently adopted. *See* section 101(a)(27)(J) of the Act; *see also* 8 C.F.R. § 204.11. Upon a review of the record, we initially determined that the Petitioner did not establish that he is eligible for SIJ classification because he did not demonstrate that he was declared a dependent upon a juvenile court located in the United States in accordance with state law. We issued a notice of intent to deny (NOID) the petition on August 7, 2015, incorporated here by reference, where we fully discussed the pertinent facts, relevant evidence submitted below, and the remaining deficiencies of the record. Accordingly, we will only address the evidence submitted in response to the NOID issued on appeal. In response to the NOID issued on appeal, the Petitioner submits a brief, a supplemental order clarifying special immigrant juvenile status issued by the juvenile court, and copies of USCIS policy memoranda pertaining to SIJ eligibility. The Petitioner also resubmits the [REDACTED] 2013, juvenile court order issued when he was [REDACTED] years old.

A full review of the record, including the evidence submitted on appeal, demonstrates that the Petitioner is eligible for SIJ classification. The juvenile court order states that the Texas Department of Family & Protective Services (DFPS) was named managing conservator of the Petitioner on May 23, 1997 and that the Petitioner's parents' rights were terminated on November 12, 1998. The juvenile court order containing the requisite nonviability of reunification and best interest determinations was issued on [REDACTED] 2013. Section 101.003(a) of the Texas Family Code defines a minor as an unmarried person under eighteen years of age. In certain circumstances, section 263.602 of the Texas Family Code allows for jurisdiction of the juvenile court to extend over individuals who are older than eighteen if the individual "was in the conservatorship of the department on the day before the person's 18th birthday."

As the petitioner was [REDACTED] years old at the time of the juvenile court proceedings, he was not a minor under the Texas Family Code. The supplemental order that the Petitioner submits on appeal, however, clarifies that the juvenile court previously had jurisdiction over the Petitioner while he was under the conservatorship of DFPS and that, pursuant to the [REDACTED], 2013, juvenile court order, as well as the supplemental order clarifying special immigrant juvenile status, the juvenile court continues to have jurisdiction over the Petitioner pursuant to state law. In addition, the Order to Extend Court Jurisdiction issued [REDACTED] 2014, states that the Petitioner was under the conservatorship of DFPS before his 18th birthday giving the juvenile court continued and exclusive jurisdiction. The Petitioner has established that he was considered a minor under Texas law at the time the juvenile court order was issued. The juvenile court further found that the Petitioner's reunification with his parents was not viable due to abuse and abandonment and concluded that it was not in the Petitioner's best interest to return to Mexico where he has not been since he was an infant. Our review of the record demonstrates the *bona fides* of the Petitioner's request for special immigrant juvenile classification and that he had a valid dependency order prior to filing his SIJ petition. Accordingly, the Petitioner has established his 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 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 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 J-C-C-*, ID#13422 (AAO Sept. 24, 2015)