U.S. Citizenship and Immigration Services

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

MATTER OF E-M-

DATE: SEPT. 29, 2015

APPEAL OF MOUNT LAUREL, 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 (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, Mount Laurel, New Jersey, denied the petition. The matter is now before us on appeal. The appeal will be dismissed and the petition will remain denied.

## 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.[1] Section 101(a)(27)(J) of the Act defines a special immigrant juvenile as:

> an immigrant who is present in the United States—
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> (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;

[1] 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.; The SIJ provisions of the TVPRA are applicable to this appeal. *See* section 235(h) of the TVPRA.

(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 Israel on . He entered the United States as a nonimmigrant visitor on October 12, 2010. On April 13, 2011, the Superior Court of New Jersey, Chancery Division – granted the Petitioner's aunt and uncle custody over him. *See Custody Order*, N.J. Super. Ct. Ch. Div., . The Petitioner returned to Israel in September 2011 and again entered the United States as a nonimmigrant visitor on October 15, 2013. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on February 18, 2014. The Director denied the Petitioner's request for SIJ classification because the Petitioner did not establish that he was the subject of a qualifying juvenile court order. The Director further determined that the Petitioner did not establish that his request for SIJ classification is bona fide and merits the agency's consent. The Petitioner timely appealed. We subsequently issued a request for evidence (RFE) in this matter to which the Petitioner responded.

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 all of the Director's grounds for denial and the Director's decision will be affirmed for the following reasons.

## III. ANALYSIS

When initially reviewing the appeal prior to our issuance of the RFE, we determined that the Director erred in going behind the juvenile court's order to make her own determination that the Petitioner had not been abandoned by his parents under New Jersey law. We further found that the Director misinterpreted the consent requirement of the Act in finding that the Petitioner did not file the Form I-360 primarily to obtain relief from parental abuse, neglect, or abandonment. Upon a review of the record, however, we determined that it did not contain sufficient evidence to establish a reasonable factual basis for the requisite nonviability of reunification and best interest

determinations, which caused us to issue the RFE. In addition, the Petitioner did not demonstrate that the juvenile court order remained in effect after his departure from the United States that resulted in a two-year separation from his aunt and uncle. In our RFE on June 9, 2015, incorporated here by reference, 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 RFE issued on appeal. In response to the RFE issued on appeal, the Petitioner resubmits the juvenile court order and letter from the Department of Social Services. In addition, the Petitioner submits a brief, the Verified Complaint for Custody/Co-Guardianship of Minors, a copy of the juvenile court transcripts, and the death certificates for both of his parents.

A review of the record, including the evidence submitted in response to the RFE, does not establish that the Petitioner is eligible for SIJ classification because the juvenile court order remains deficient under section 101(a)(27)(J)(i)-(ii) of the Act. When adjudicating a petition for special immigrant juvenile status, United States Citizenship and Immigration Services (USCIS) examines the juvenile court order only to determine if the order contains the requisite findings of dependency or custody; nonviability of family reunification due to parental abuse, neglect or abandonment; and the best-interest determination, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. USCIS then reviews the relevant evidence to ensure that the record contains a reasonable factual basis for the court's determinations, which demonstrate that the court order was sought primarily to obtain relief from abuse, neglect or abandonment.

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. 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).[2] Where the record lacks evidence providing a reasonable factual basis for the juvenile court order, USCIS may request additional evidence from the petitioner to establish a reasonable basis for the agency's consent to SIJ classification.[3] Here, the juvenile court order states that the Petitioner was "constructively abandoned" due to the deaths of his parents. On appeal, the Petitioner submits death certificates for his parents as requested and thereby establishes a reasonable factual basis for the juvenile court's determination regarding nonviability of family reunification due to the deaths of the Petitioner's parents. However, the Petitioner did not establish a reasonable, factual basis for the juvenile court's best interest determination.

The order states that it is not in the Petitioner's best interest to be returned to Israel but the juvenile court order does not provide a reason for this determination. The letter from the Department of Social Services as well as the affidavits from the Petitioner and his family members indicate that it is not in Petitioner's best interest to return to Israel because he would be separated from his brothers and be placed into the Israeli foster care system. The Verified Complaint for

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[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).

[3] *Id.* at 5.

Custody/Co-Guardianship of minors also indicates that the Petitioner could not return to Israel because there was no one there to care for him. This was contradicted by the Petitioner's subsequent return to Israel within five months after the juvenile court order was issued, however, and we requested additional evidence to provide a reasonable, factual basis for the juvenile court's best interest determination. To support the best interest determination, the Petitioner resubmits previously submitted court documents and submits a copy of the transcript of his juvenile court proceedings. The transcripts do not provide any additional information sufficient to support the court's best interest determination.

In addition, the Petitioner has not established that his Form I-360 merits the agency's consent because he has not established that the juvenile court order remained valid after his two-year return to Israel. On appeal, the Petitioner asserts the juvenile court order remains valid despite his over two-year return to Israel prior to filing the Form I-360. He states that, while he was living in Israel from September 2011 until October 2013, his guardians provided financial and emotional support for him and his brothers, who were also living in Israel, thus maintaining their guardianship rights and responsibilities. *See Filippone v. Lee*, 304 NJ Super 301 (1997) (holding that, although there is presumption of child's emancipation at age eighteen, that presumption is rebuttable); *see also Newburgh v. Arrigo*, 88 N.J. 529 (1982). He further asserts that New Jersey case law holds that a juvenile court order remains valid until terminated by a juvenile court and that this is evidenced by the fact that the juvenile court deemed the Petitioner eligible for long term foster care knowing that he would soon be turning 18 years old.

The facts in *Filippone* and *Newburgh* are distinguishable from the facts in the instant petition as they pertain to child support responsibilities of a noncustodial parent. Therefore, the holdings in *Filippone and Newburgh* are not applicable in determining whether the Petitioner's juvenile court order remained valid after he returned to live in Israel without his guardians. In addition, the TVPRA removed the need for the juvenile court to deem a juvenile eligible for long term foster care and its inclusion in the juvenile court order does not demonstrate that the juvenile court intended its jurisdiction to extend to Israel where the Petitioner resided for two years after the order was issued. The court transcripts reflect only that the juvenile court determined that the Petitioner's deceased parents had constructively abandoned him. As the Petitioner has not submitted any other relevant evidence from the juvenile court to establish that the juvenile court order remained in effect even after his departure from the United States, he has not established eligibility for SIJ classification.

## III. CONCLUSION

The burden of proof in these proceedings rests solely with the Petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the Director's decision will be affirmed and the petition will remain denied.

**ORDER:** The appeal is dismissed.

Cite as *Matter of E-M-*, ID#12302 (AAO Sept. 29, 2015)