



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

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

MATTER OF F-A-R-B-

DATE: APR. 14, 2016

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

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

The Petitioner seeks classification as a special immigrant juvenile (SIJ). *See* Immigration and Nationality Act (the Act) §§ 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The SIJ classification protects foreign children in the United States who have been abused, neglected, or abandoned, and found dependent on a juvenile court in the United States.

The District Director, New York, New York, denied the petition. The Director concluded that the juvenile court dependency or custody order for the Petitioner was not in effect at the time the Petitioner filed his petition.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the petition should be approved because all required evidence had been submitted prior to the date of the Director's denial decision.

Upon *de novo* review, we will dismiss the appeal.

**I. APPLICABLE LAW**

Section 204(a)(1)(G) of the Act allows an individual to self-petition for classification as an SIJ. Section 101(a)(27)(J) of the Act defines an SIJ 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;

(b)(6)

*Matter of F-A-R-B-*

(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[.]

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 classification. 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 solely or primarily to obtain an immigration benefit.<sup>1</sup>

The burden of proof is on a petitioner to demonstrate eligibility for SIJ classification by a preponderance of the evidence. See *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010).

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Guatemala on [REDACTED]. He entered the United States without inspection, admission, or parole on or about January 25, 2013, at the age of [REDACTED] and was apprehended by U.S. Customs and Border Protection two weeks later during a routine traffic stop in Texas. The Petitioner was subsequently placed into removal proceedings under section 240 of the Act, 8 U.S.C. § 1229a, where he submitted a Form I-589, Application for Asylum and Withholding of Removal, as form of relief from removal.

The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on December 22, 2014, when he was [REDACTED] years old. He did not include any supporting documentation,

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<sup>1</sup> H.R. Rep. No. 105-405 at 130 (1997); see also Memorandum from Donald Neufeld, Acting Associate Director for Domestic Operations, USCIS, HQ 70/8.5, *Trafficking Victims Protection Reauthorization Act of 2008; Special Immigrant Juvenile Status Provisions* 3 (Mar. 24, 2009), <https://www.uscis.gov/laws/policy-memoranda>.

(b)(6)

*Matter of F-A-R-B-*

including an order from a juvenile court declaring him dependent on that court, as required by section 101(a)(27)(J) of the Act.

On [REDACTED] 2015, after the Petitioner filed his Form I-360 and when he was [REDACTED] years old, the Family Court of the State of New York, [REDACTED] (juvenile court), granted guardianship of the Petitioner to his mother, R-B-G-<sup>2</sup> (Order Appointing Guardian). The juvenile court further made findings relevant to the Petitioner's eligibility for SIJ classification in a separate order (SIJ Status Order).<sup>3</sup> On April 6, 2015, the Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, and included copies of these two orders. The Director denied the Petitioner's request for SIJ classification because a juvenile court dependency or custody order for the Petitioner was not in effect at the time the Petitioner filed his Form I-360. The Petitioner timely appealed.

### III. ANALYSIS

#### A. The Petitioner Was Ineligible for SIJ Classification at the Time of Filing the Form I-360

The regulation at 8 C.F.R. § 204.11(d) is titled "Initial documents which must be submitted in support of the petition," and lists a juvenile court dependency order as one of these required documents. 8 C.F.R. § 204.11(d)(2).

Here, the Petitioner did not submit the requisite juvenile court order with his Form I-360 that he filed on [REDACTED] 2014. *See* 8 C.F.R. § 103.2(b)(1) (providing that a benefit request must be filed with all initial evidence required by applicable regulations and other USCIS instructions). He also did not, after the filing of his Form I-360, submit a juvenile court order declaring him dependent on that court on a date on or before [REDACTED] 2014.

The Petitioner provided an underlying Petition for Appointment as Guardian of Person, signed on [REDACTED] 2014, that the Petitioner states demonstrates his eligibility at the time of filing because this petition was pending with the court when he filed his Form I-360. Although the Petitioner claims that this petition was filed with the court by his mother, R-B-G-, the name of the petitioning guardian on his petition is C-P-, who is not the Petitioner's mother. The outcome of this petition is unknown and, more importantly, this petition contains inaccurate information. Accordingly, we give no credit to the Petitioner's claim that dependency proceedings on his behalf were pending at the time he filed his Form I-360. Even if dependency proceedings had been pending as of December 2014, that fact would be insufficient to demonstrate eligibility because the proceedings had not yet

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<sup>2</sup> We provide the initials of individual names throughout this decision to protect identities.

<sup>3</sup> The juvenile court order assumed jurisdiction over the Petitioner until the age of 21 with the Petitioner's consent, but did not cite to the relevant statutory authority for the court's jurisdiction over the Petitioner after he attained the age of 18 years. However, the Petitioner submits the underlying Petition for Appointment As Guardian of Person, which cites to section 661 of the New York Family Court Act, defining the term "minor" for purposes of guardianship as including a person less than 21 years of age who consents to the appointment or continuation of a guardian after age 18.

(b)(6)

*Matter of F-A-R-B-*

resulted in a juvenile court declaring the Petitioner dependent on that court, as section 101(a)(27)(J)(i) requires.

On appeal, the Petitioner submits a Petition for Appointment as Guardian of Person, which the Petitioner's mother submitted to the court on January 22, 2015, after the Petitioner filed his Form I-360. Based on this petition, the court issued its Order Appointing Guardian and SIJ Status Order on [REDACTED] 2015, nearly two months after the Form I-360 was filed. The Petitioner is required to establish eligibility at the time of filing the immigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, the Petitioner was not eligible for SIJ classification because at the time of filing the Form I-360 he had not "been declared dependent on a juvenile court located in the United States." Section 101(a)(27)(J)(i) of the Act.

On appeal, the Petitioner contends that the regulation at 8 C.F.R. § 103.2(b)(8) allows discretion in the consideration of additional and later-filed evidence, notwithstanding the requirements under 8 C.F.R. § 204.11(d). He further urges us to approve the Form I-360 "in equity" because he satisfied all the requirements for SIJ classification prior to the Director's adjudication of the Form I-360 and is no longer eligible to refile his petition as he is now over the age of 21.

As we previously noted, SIJ classification requires a petitioner to demonstrate that he or she "has been declared dependent on a juvenile court located in the United States, and that eligibility for an immigration benefit must be established at the time of filing (emphasis added). See section 101(a)(27)(J)(i) of the Act; 8 C.F.R. §§ 103.2(b)(1) and 204.11(c),(d). Although USCIS has discretion under the regulation at 8 C.F.R. § 103.2(b)(8)(ii) to request missing evidence, the Petitioner does not cite to any authority that would allow USCIS to waive the requirement of obtaining the required juvenile court dependency order, which is the basis for SIJ classification eligibility, prior to the filing date of the Form I-360.

The Petitioner also contends that pursuant to the settlement agreement in *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. 2005), his Form I-360 should not be denied because he was under 21 years of age at the time he filed his Form I-360, and his dependency order has now expired based on his age.

The Petitioner's reliance on the *Perez-Olano* settlement agreement is misplaced. Pursuant to the Stipulation enforcing the *Perez-Olano* settlement agreement, USCIS will not deny, revoke, or terminate a SIJ petition or an SIJ-based Form I-485 if, *at the time of filing the SIJ petition*: (1) the petitioner is or was under 21 years of age, unmarried, and otherwise eligible; *and* (2) the petitioner either is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age *prior to filing* (emphasis added).<sup>4</sup> Thus, the *Perez-Olano* settlement

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<sup>4</sup> See also USCIS Policy Memorandum PM-602-0117, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* 4 (June 25, 2015), <https://www.uscis.gov/laws/policy-memoranda>.

(b)(6)

*Matter of F-A-R-B-*

agreement and Stipulation reinforce the initial evidentiary requirement that a juvenile court dependency order must have been issued prior to the Form I-360 filing date as a threshold eligibility criterion for SIJ classification. The Petitioner here did not have a juvenile dependency order in effect prior to or at the time of his Form I-360 filing and thus the *Perez-Olano* settlement agreement or Stipulation does not apply in this situation.

The Petitioner also claims that the Director was “aware of [the Petitioner’s] eligibility and denied his [Form] I-360 with the purpose of keeping him from reapplying as the decision was rendered well after his twenty first birthday.” We find no merit to the Petitioner’s assertion on appeal. The juvenile court order was not issued until [REDACTED] 2015, approximately two days before the Petitioner’s [REDACTED] birthday. Moreover, the Petitioner did not immediately provide the order to USCIS, and instead submitted the order over six weeks later on April 6, 2015, in conjunction with his Form I-485. Unfortunately, the Petitioner was already [REDACTED] years of age as of the date of receipt by the Director. Thus, for all but two days of the period that the Form I-360 was pending there was no court order in effect. Although the Petitioner could have submitted the guardianship order as of [REDACTED] 2015, he did not do so and instead waited several weeks to submit it in the context of his Form I-485, well after he had turned [REDACTED] years of age.

The Petitioner was not eligible for SIJ classification at the time he filed his Form I-360 in December 2014 because he had not yet been declared dependent on a juvenile court. The juvenile court’s declaration of dependency did not occur until [REDACTED] 2015, almost two months after he filed the Form I-360. For this reason alone, the Petitioner’s Form I-360 is not approvable. Nevertheless, even if the Petitioner had obtained and filed the juvenile court order along with the Form I-360, he would still be ineligible for the requested benefit because we would not consent to the grant of SIJ classification to the Petitioner.

#### B. USCIS’ Consent is Not Warranted

When adjudicating an SIJ Form I-360, USCIS examines the juvenile court order to determine if it contains the requisite findings of dependency or custody, non-viability of reunification with one or both parents, and the best interests determination, as required by sections 101(a)(27)(J)(i) and (ii) of the Act. USCIS requires the factual basis for the court’s findings so it may fulfill its required consent function.<sup>5</sup> Juvenile court orders that include or are supplemented by specific findings of fact as to its SIJ findings will generally be sufficient to establish eligibility for consent. Although a juvenile court’s findings need not be overly detailed, they must reflect that the juvenile court made an informed decision.<sup>6</sup>

We cannot consent to the grant of SIJ classification to the Petitioner for several reasons.

<sup>5</sup> A “factual basis” means the facts upon which the juvenile court relied in making its rulings or findings.

<sup>6</sup> See Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQADN 70/23, *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 juvenile court’s rulings).

(b)(6)

*Matter of F-A-R-B-*

First, the Petitioner's mother's [REDACTED] 2015, guardianship petition is so replete with errors that the court could not have made an informed decision when it issued its Order Appointing Guardian and SIJ Status Order on [REDACTED] 2015. Here are the errors we found:

- Page 3 at number 8.a. lists the name of the Petitioner as J-A-M-; however, F-A-R-B- is the Petitioner's name.
- The Petitioner's birth certificate states that he was born in Guatemala and he declared to the court that he lived in that country until coming to the United States. However, the Petitioner's mother declares in the same number 8.a. on page 3 of her petition: "[W]hen [the Petitioner] was living in El Salvador with his grandmother I would send money to them."
- Page 6 at number 12 provides the Petitioner's father's name as J-V-M-; however, on his birth certificate his father's name is listed as F-R-X.

Second, the Petitioner's and his mother's testimony to the court are inconsistent with the Petitioner's testimony submitted in support of his Form I-589.

We already noted that the Petitioner's mother erroneously referred to J-V-M- as the Petitioner's father at page 6 number 12 of her petition. When the Petitioner's mother was asked to provide the reason why J-V-M- should not be appointed as guardian, the Petitioner's mother wrote: "[T]he father abandoned the child at [REDACTED] years of age. Thereafter the child began living on his own in Guatemala. The child was malnourished and poorly supervised while living on his own . . . ."

In his affidavit to the court, dated [REDACTED] 2014, the Petitioner stated at numbers 7 – 9 regarding his life in Guatemala that he was threatened by drug dealers, and that he decided "it was no longer safe for me to keep traveling to school by myself, so I stopped attending school." The Petitioner then asserted at number 10 of his affidavit: "I decided that I go live with my mother due to the violence of drugs that was prevalent in the vicinity where we lived." The Petitioner did not assert in his affidavit that he had become malnourished or otherwise discuss his health.

In contrast to the Petitioner's and his mother's testimony to the court, the Petitioner stated the following in his May 2014 declaration submitted in support of his Form I-589:

In Guatemala, after I finished high school, I did not have enough money to continue my education in going to college. Therefore, I began to work as a taxi driver. I drove taxis in Guatemala and I transported children and youngsters to school, and my job was going well for me. With what I earned, I lived a humble, but tranquil life.

The Petitioner went on to say in his declaration that he came to the United States because drug traffickers began to specifically target him, which is not consistent with his claim in his affidavit to the juvenile court that the general drug violence caused him to leave Guatemala. More importantly, however, the Petitioner told the juvenile court that he had to drop out of school because of drug violence, which prompted his journey to the United States, whereas he wrote in his declaration in

support of his Form I-589 that he graduated from high school and made a living as a taxi driver, living a humble but tranquil life. The Petitioner's mother's also declared to the juvenile court that the Petitioner was malnourished, but the Petitioner stated in his Form I-589 declaration that he was gainfully employed as a taxi driver until he left Guatemala.

The errors in the mother's petition noted above, as well as the inconsistencies in the testimony provided to the juvenile court and in support of the Form I-589, demonstrate that the juvenile court did not make an informed decision in its SIJ findings because the juvenile court considered and relied on inaccurate facts to issue its Order Appointing Guardian and SIJ Status Order. Accordingly, the record of proceedings does not demonstrate a reasonable factual basis for the juvenile court's SIJ Status Order.

Third and finally, in its SIJ Status Order, the juvenile court mirrored the language of section 101(a)(27)(J)(i) of the Act and provided no factual basis for its conclusions. For example, the SIJ Status Order states at number 8 that "[r]eunification with one or both of her [sic] parents is not viable due to abandonment by a parent." In addition to identifying the Petitioner by an incorrect gender, the SIJ Status Order does not specify which parent abandoned the Petitioner.

In summary, the Petitioner's Form I-360 is not approvable because he had not been declared dependent on a juvenile court at the time he filed for SIJ classification. Even if the Petitioner could have cured this deficiency, he would still remain ineligible for the requested benefit because we would not consent to a grant of SIJ classification due to the noted errors, inconsistencies, and deficiencies above.

#### IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-A-R-B-*, ID# 16014 (AAO Apr. 14, 2016)