



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

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

MATTER OF A-G-M-V-

DATE: APR. 22, 2016

APPEAL OF BLOOMINGTON, MINNESOTA 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) sections 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, Bloomington, Minnesota, denied the petition. The Director concluded that the Petitioner's dependency order was not valid because the Petitioner was already over 18 years of age when the juvenile court issued the order and the record did not establish the court's authority to exercise jurisdiction over the Petitioner as a child under Texas state law.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and previously submitted evidence. The Petitioner claims that the juvenile court properly exercised jurisdiction over the Petitioner as a child to issue the dependency order.

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)

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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[.]

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.¹

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, 376 (AAO 2010).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in El Salvador on [REDACTED]. She entered the United States without inspection, admission, or parole on or about April 15, 2014, at the age of [REDACTED] and was apprehended by U.S. Customs and Border Protection around the time of her entry near [REDACTED] Texas. On [REDACTED] District Court in [REDACTED] Texas (juvenile court), issued an Order of Dependency and Findings (dependency order), in which it found the Petitioner a dependent of the court and made determinations relevant to the Petitioner's eligibility for SIJ classification.

The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 6, 2014. The Director subsequently issued a notice of intent to deny (NOID), determining

¹ 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>.

that the dependency order was not issued by the juvenile court in accordance with state law, as required by section 101(a)(27)(J)(i) of the Act, because the Petitioner was already over 18 years of age when the order issued and therefore not a child under Texas state law. The Petitioner timely responded to the NOID with a brief and additional evidence, which the Director found insufficient to establish the Petitioner's eligibility.

III. ANALYSIS

A full review of the record, as supplemented on appeal, does not establish the Petitioner's eligibility. The appeal will be dismissed for the following reasons.

A. The Petitioner Is Not the Subject of a Valid Juvenile Court Order

The Director properly found the juvenile court dependency order at issue here to be deficient, as the record did not establish that the Petitioner was declared a dependent upon the court in accordance with state law. *See* section 101(a)(27)(J)(i) of the Act; *see also* 8 C.F.R. § 204.11(c)(3). Section 101.003(a) of the Tex. Fam. Code Ann. defines a minor as an unmarried person under 18 years of age. Here, the Petitioner was already 18 years old when the juvenile court issued the dependency order. Although the order specifically found the Petitioner to be a "juvenile," it cited only to the federal definition of the term at 8 C.F.R. § 204.11(a), as "an unmarried person under twenty-one years of age." The juvenile court did not, however, identify the statutory or legal authority *under Texas state law* on which it relied in assuming jurisdiction over the Petitioner as a minor after she had already turned 18 years of age.

On appeal, the Petitioner contends that the Director improperly disregarded the juvenile court's explicit finding that it had jurisdiction to apply the federal definition for purposes of the Petitioner's dependency hearings. In fact, the Director specifically considered the findings in the juvenile court order but found that the record did not establish that the court had the authority under Texas state law to exercise jurisdiction over the Petitioner to make such findings when the Petitioner was no longer a minor or child under state law. The Petitioner asserts, however, that a child under Texas law includes not only unmarried individuals who are under 18 years of age, but also those that "the court deems juveniles pursuant to its authority under" Tex. Fam. Code Ann. section 101.003(a).² However, nothing in the plain language reading of section 101.003(a) of the Tex. Fam. Code Ann. grants the juvenile court here authority to alter or expand the state's definition of "child" or "minor" so as to include the federal definition of "juvenile," and the Petitioner does not cite to any relevant, legal authority for her interpretation of the Texas statute. Although Tex. Fam. Code Ann. section 101.003(a) defines those terms to include individuals who have "not had the disabilities of minority removed for general purposes," the Petitioner has not shown that she fell within this definition such that the juvenile court had the authority to exercise jurisdiction over her as a child or minor.

² Section 101.003(a) of the Tex. Fam. Code Ann. provides in pertinent part: that a "[c]hild" or "minor" means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes."

Finally, the Petitioner contends that the Director erred in relying on an unpublished Texas Court of Appeals case, *In re J.L.E.O.*, No. 14-10-00628-CV, 2011 WL 664642 (Tex. Ct. App. Feb. 24, 2011), to find that a Texas juvenile court did not have jurisdiction to declare the Petitioner a dependent of the court after the Petitioner's 18th birthday, because those proceedings involved a suit affecting a parent-child relationship, unlike here. However, our review indicates that both the Petitioner here and the appellant in *J.L.E.O.* filed declaratory judgments seeking SIJ findings from a juvenile court in Texas. *In re J.L.E.O.*, 2011 WL 664642, at *1 (“[The Children’s] Center filed a request for a declaratory judgment seeking the SIJS findings” on behalf of J.L.E.O.). The Petitioner does not demonstrate how the Petitioner’s request to the juvenile court for SIJ findings is different. The Petitioner further asserts that the appellate court there never “explicitly or implicitly” found that the district court could not have jurisdiction if it so chose. Contrary to the Petitioner’s assertions, the Texas appellate court specifically found that the juvenile court did not have jurisdiction over J.L.E.O. because the latter was already 18 years of age and no longer a child under section 101.003(a) of the Tex. Fam. Code Ann. when the request for declaratory judgment was filed. *In re J.L.E.O.*, 2011 WL 664642, at *2. However, regardless of *J.L.E.O.*’s applicability in these proceedings, the Petitioner bears the burden to demonstrate that the Texas juvenile court exercised jurisdiction over her as a minor and declared her a dependent upon the court after her 18th birthday in accordance with state law, which defines minor or child as an unmarried individual under 18 years of age. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (The Petitioner bears the burden in establishing his or her eligibility by a preponderance of the evidence in these proceedings). As discussed, she has not met her burden.

Accordingly, as the Petitioner has not demonstrated that the juvenile court dependency order was issued in accordance with state law, as required by section 101(a)(27)(J)(i) of the Act, she has not established the validity of the order and her eligibility for SIJ classification.

B. USCIS’ Consent is Not Warranted

We further find that the Form I-360 is also not approvable because the present record does not establish a reasonable factual basis for the juvenile court’s non-viability of parental reunification and best interest determinations. Consequently, USCIS’ consent to a grant of SIJ classification, required under section 101(a)(27)(J)(iii) of the Act, 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.³ 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

³ A “factual basis” means the facts upon which the juvenile court relied in making its rulings or findings.

court's findings need not be overly detailed, they must reflect that the juvenile court made an informed decision.⁴

The juvenile court order here includes the requisite determinations that the Petitioner's reunification with her biological father was not viable due to his abandonment of her and that it was not in the Petitioner's best interests to be returned to El Salvador. The court did not, however, make any factual findings to provide a reasonable factual basis for the best interest determination. Likewise, apart from a general finding that the Petitioner's father abandoned her and had passed away, the court did not identify the evidence or information upon which it based its non-viability determination. The record below also does not include the underlying petition for the juvenile court order, or other evidence, on which the court may have relied in determining that the Petitioner had been abandoned by her father and that it was not in the Petitioner's best interest to be returned to El Salvador. The record is therefore insufficient in establishing that the juvenile court made an informed decision in rendering the requisite determinations.

Although the Director did not reach this issue specifically, the Petitioner on appeal asserts that the record established a reasonable factual basis for the juvenile court's non-viability and best interest determinations, contending that the juvenile court is in the best position to determine if the Petitioner has been abused or abandoned.⁵ The Petitioner is correct that the Act defers findings relating to issues of child welfare under state law 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). However, as discussed, in exercising its consent function, USCIS still examines the record to determine whether the juvenile court made the requisite factual findings that establish a reasonable factual basis for its non-viability and best interest determinations. Here, the juvenile court did not make specific factual findings or identify the evidence or information on which it relied in rendering the requisite determinations.

As the record does not establish a reasonable factual basis for the juvenile court's best interest and non-viability of parental reunification determinations, the consent of USCIS to a grant of SIJ classification, as required by section 101(a)(27)(J)(iii) of the Act, is not warranted.

⁴ *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).

⁵ The Petitioner further contends that the Director erred in not requesting more evidence if the record is deemed insufficient to establish a reasonable factual basis for the court determinations. Our review discloses, however, that the Director's NOID specifically notified the Petitioner that the record had not established a reasonable factual basis for the court's non-viability determination. As noted, the Director ultimately did not reach this issue and denied the Form I-360 on other grounds.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-G-M-V-*, ID# 16177 (AAO Apr. 22, 2016)