



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

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

MATTER OF B-L-A-V-

DATE: APR. 28, 2016

APPEAL OF CHARLESTON, SOUTH CAROLINA FIELD 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). 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 Field Office Director, Charleston, South Carolina, denied the petition. The Director concluded that USCIS consent to the Petitioner's request for a grant of SIJ classification was not warranted and that the juvenile court order did not contain the requisite non-viability of parental reunification determination.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that the Director erred and that the juvenile court order sets forth the requisite non-viability determination.

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:

[A]n 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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(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 primarily to obtain immigrant status.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 Guatemala on [REDACTED] and entered the United States on or about December 26, 2013, without inspection, admission, or parole, when she was [REDACTED] years old. She was apprehended by U.S. Border Patrol agents shortly after her entry near [REDACTED] Texas. She was issued a Form I-862, Notice to Appear, placing her into removal proceedings before an immigration court and was then taken into custody of the Office of Refugee Resettlement. The Petitioner was subsequently released into the custody of her mother. The record indicates that the immigration court issued a final order of removal against the Petitioner on [REDACTED] 2015.

On [REDACTED] 2014, the Family Court of the [REDACTED] South Carolina (juvenile court) issued a Temporary Order declaring the Petitioner a dependent on the court

¹ H.R. Rep. No. 105-405, at 130 (1997); *see also* Memorandum from Donald Neufeld, Acting Associate Director for Domestic Operations, USCIS, HQOPS 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>.

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and making specific findings to establish the Petitioner's eligibility for SIJ classification. On [REDACTED] 2014, the juvenile court issued an Amended Temporary Order, amending in part its findings relating to the Petitioner's request for SIJ classification.

The Petitioner filed this 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), asserting that inconsistencies in the record indicated that USCIS' consent to the Petitioner's request was not warranted. The Director further indicated that the juvenile court order was deficient as it did not appear to have the requisite determination of non-viability of parental reunification. The Petitioner responded to the NOID with a brief and additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 and the Petitioner timely appealed.

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. USCIS' Consent

Insofar as the decision below found that the Petitioner's request for SIJ classification was not *bona fide* and did not merit USCIS' consent, it is misguided.² When adjudicating an SIJ petition, USCIS examines the juvenile court order only to determine if it contains the requisite findings of dependency or custody; non-viability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner's best interests, as required by sections 101(a)(27)(J)(i) and (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 (referencing the determinations of a juvenile court or other administrative or judicial body). However, 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 court's findings need not be overly detailed, they must reflect that the juvenile court made an informed decision.⁴

Here, the juvenile court made specific factual findings in rendering its non-viability and best interest

² Although the Director concluded that the Petitioner's request for SIJ classification did not merit USCIS' consent, the decision below only repeated a portion of the language of the NOID without any further analysis or consideration of the Petitioner's response to the NOID on this issue. However, we consider this issue under our *de novo* authority.

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

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 27, 2004), <https://www.uscis.gov/archive/archive-laws/archive-memos> (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the juvenile court's rulings).

determinations in its order. Rather than inquiring into whether there was a reasonable factual basis for the court's determinations, the Director went behind the juvenile court's determination to find that the Petitioner's request for SIJ classification was not *bona fide* based on perceived inconsistencies in the Petitioner's testimony to border patrol agents at her time of entry and the facts she asserted to the juvenile court and presented in her affidavit. Although the decision below indicated that the juvenile court's best interest determination, based in part on the court's finding that the Petitioner had been neglected by her caregiver in Guatemala, was inconsistent with the Petitioner's statements to border patrol agents in which she did not mention any neglect by her caregiver and where she had indicated that she resided with her caregiver and went to school, our review does not disclose any discrepancy in the evidence referenced by the Director. The record indicates that the Petitioner was a minor at the time border patrol agents interviewed her and there is no evidence that they ever asked the Petitioner about the conditions in which she resided with her caregiver. The Director did not identify any other discrepancies in the record, although the decision below placed significant weight on the fact that the Petitioner's birth certificate lists her uncle as her father,⁵ without any explanation of why this rendered her request for SIJ classification not *bona fide*, especially as the Petitioner raised this fact both to the juvenile court and USCIS' attention. Further, as indicated, the requisite juvenile court determinations were supported by other factual findings by the court, including that: the Petitioner's biological father was deceased; her legal father had never cared for or supported her; the Petitioner's mother was in the United States and provided support to her; and the Petitioner had educational and occupational opportunities in the United States whereas she risked "probable threat of death or bodily injury" from local drug traffickers, sex traffickers, or gangs in Guatemala. Thus, we withdraw the Director's decision insofar as it went impermissibly behind the requisite juvenile court determinations, supported by specific factual findings, to make a subjective determination that the Petitioner's request for SIJ classification was not *bona fide*. However, notwithstanding our finding, the Form I-360 is not approvable because the juvenile court order is otherwise deficient.

B. The Juvenile Court Order Is Deficient

The relevant evidence in the record does not establish that the Petitioner is eligible for SIJ classification because the juvenile court order is deficient under section 101(a)(27)(J)(i) of the Act. The plain language of the statute requires that an SIJ petitioner demonstrate that "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." Section 101(a)(27)(J)(i) of the Act. The Act explicitly defers findings on issues of child welfare under state law to the expertise and judgment of the juvenile court. *See id.* As noted, in adjudicating an SIJ Form I-360, we examine the juvenile court order to determine if the court made the requisite findings of dependency or custody, non-viability of reunification with one or both parents, and the best interests determination, required by sections 101(a)(27)(J)(i) and (ii) of the Act.

⁵ The Petitioner indicated that her biological father died shortly before her birth and that her father's brother listed his name on her birth certificate to avoid any shame falling on the Petitioner.

Here, the juvenile court found that reunification with the Petitioner's claimed biological father was not possible because he was deceased, but it did not indicate whether the death of a parent constituted "abuse, neglect, abandonment, or a similar basis" under South Carolina state law, as required by the Act.⁶ Similarly, although the court order had a separate determination that the Petitioner had "never been in the care of or been supported by [her] uncle who is listed as the father on her birth certificate," the juvenile court never made a specific determination that parental reunification with the Petitioner's legal father⁷ was not viable due to abuse, neglect, or abandonment.

On appeal, the Petitioner contends that the juvenile court order language relating to the Petitioner's legal father was sufficient to constitute a finding of abandonment by the juvenile court pursuant to S.C. Code Ann. section 63-7-20.⁸ Notwithstanding the Petitioner's assertions, the juvenile court made only a determination that the legal father had never cared for or supported the Petitioner. The court made no specific finding that such conduct constituted abandonment or that reunification with the Petitioner's legal father was not viable. Moreover, our review of the underlying petition for guardianship that the Petitioner's mother filed with the juvenile court discloses that she only requested the required non-viability determination with respect to the Petitioner's claimed biological parent and not as to the Petitioner's legal father.

Accordingly, as the juvenile court did not make a specific non-viability of parental reunification determination as to the Petitioner's legal father, and the non-viability determination as to her claimed biological father did not specify that parental reunification was not viable due to abuse, neglect, abandonment, or a similar basis found under South Carolina state law, the juvenile court order does not satisfy the requirements of section 101(a)(27)(J) of the Act and is deficient.

Additionally, after our *de novo* review, we find that the juvenile court order is also deficient because it was issued as a temporary order. As stated previously, the Act requires an SIJ petitioner to demonstrate that reunification with one or both of his or her parents is not viable. Section 101(a)(27)(J)(i) of the Act. Both the initial juvenile court order and the subsequent amended order here are temporary on their face and indicate that they were issued pursuant to a motion for "temporary relief" and following a temporary hearing on the Petitioner's mother's Petition for Guardianship. There is no evidence in the record showing that the juvenile court subsequently issued a permanent custody or guardianship order to the Petitioner's mother. Thus, the record indicates that the juvenile court's finding of non-viability of parental reunification was issued on a temporary basis. This temporary determination does not establish that "family reunification is no

⁶ The Petitioner's birth certificate does not list the name of her claimed biological father. Consequently, even if the non-viability determination was not deficient as to her claimed biological father, the evidence in the record would be insufficient to establish the Petitioner's parent-child relationship with her claimed biological father.

⁷ We will refer to the individual listed as the father on the Petitioner's birth certificate as the "legal father" for purposes of this decision. Additionally, we withdraw in part the decision below insofar as the Director determined that the individual identified as the Petitioner's father on the birth certificate was not her legal father under South Carolina law.

⁸ "Abandonment of a child" under section 63-7-20 of the S.C. Code Ann. means "a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child."

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longer a viable option” because the Petitioner has not shown that the court ultimately granted permanent custody to the Petitioner’s mother. *See* section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (providing that a court-appointed custodian who is acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility).

In summary, the juvenile court order is deficient as it is temporary in nature and does not contain the requisite determination regarding the non-viability of parental reunification due to abuse, neglect, or abandonment. Consequently, the Petitioner does not meet the requirements of section 101(a)(27)(J) of the Act and is ineligible for SIJ classification.

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 B-L-A-V-*, ID# 16176 (AAO Apr. 28, 2016)