



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

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

MATTER OF B-S-

DATE: AUG. 5, 2016

APPEAL OF HOLTSVILLE, NEW YORK 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-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The District Director, New York, New York, denied the petition. The Director concluded that the Petitioner had not submitted sufficient evidence to warrant the consent of U.S. Citizenship and Immigration Services (USCIS) to the grant of SIJ classification to the Petitioner.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that the evidence submitted establishes that consent by USCIS is warranted.

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

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. 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;

(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 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 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 is a citizen of India who was born on [REDACTED]. The Petitioner entered the United States without inspection, admission, or parole. On [REDACTED] 2015, the Family Court of the State of New York, [REDACTED] (juvenile court) entered an order (juvenile court order), in which the juvenile court made specific findings as described at sections 101(a)(27)(J)(i)-(ii) of the Act relevant to whether the Petitioner qualifies for SIJ classification. The juvenile court also appointed S-S-² as guardian for the Petitioner in a separate order.

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>.

² Initials are used throughout this decision to protect the identities of the individuals.

The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), based on the juvenile court order. The Director denied the Petitioner's SIJ petition, concluding that the record did not establish that USCIS' consent was warranted, 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.

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.³ 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. Therefore, a juvenile court must make, in essence, two separate findings: first, that a petitioner has been subjected to abuse, neglect, or abandonment, or a similar basis found under state law; and second, that "due to [such] abuse, neglect, abandonment, or a similar basis found under State law[,] reunification with one or both parents is not viable as a result. The Act explicitly defers findings on issues of child welfare under state law to the expertise and judgment of the juvenile court. *See id.* However, in adjudicating an SIJ petition, 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.

Here, the juvenile court found that the Petitioner's father was deceased and his mother was unable to provide emotional or financial support, but it did not indicate whether the death of a parent or lack of said support constituted "abuse, neglect, abandonment, or a similar basis" under New York state law, as required by the Act. The juvenile court did not specify the ground (abuse, neglect, abandonment, or another similar basis) that applies in the Petitioner's circumstances, or cite to a particular provision of New York law to support its findings. Accordingly, as the juvenile court did not make a specific finding that parental reunification was not viable due to abuse, neglect, abandonment, or a similar basis found under New York state law, the Petitioner has not established that he is eligible for SIJ classification under section 101(a)(27)(J)(i) of the Act.

³ The Director found that the Petitioner's request for SIJ classification was not *bona fide* and did not merit USCIS' consent, but as the order is otherwise deficient, we do not reach the issue of consent in this decision.

V. CONCLUSION

The Petitioner did not establish that he was the subject of a qualifying juvenile court order. Consequently, the Petitioner does not meet the requirements at section 101(a)(27)(J)(i) of the Act and the SIJ petition will remain denied.

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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of B-S-*, ID# 17584 (AAO Aug. 5, 2016)