



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

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

MATTER OF M-E-C-R-

DATE: AUG. 11, 2016

APPEAL OF LONG ISLAND, 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 Field Office Director, New York, New York, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition). The Director concluded that the juvenile court order was deficient because it was not final.<sup>1</sup>

The matter is now before us on appeal. On appeal, the Petitioner resubmits a brief proffered below and additional evidence. The Petitioner claims that the juvenile court orders establish that the Petitioner was dependent on the court and that the court issued the requisite and final judicial determination that parental reunification was not viable.

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—

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<sup>1</sup> The Director also found that the Petitioner's request for SIJ classification did not warrant U.S. Citizenship and Immigration Services' (USCIS) consent because the juvenile court order lacked a reasonable factual basis for the requisite SIJ determinations that parental reunification was not viable and that it was not in the Petitioner's best interests to be returned to her country of nationality or last habitual residence. The Director further noted, without any analysis, that the juvenile court order is deficient because it lacks the requisite non-viability determination and that the order was not issued in accordance with state law as required. However, as we have dismissed the Petitioner's appeal on other grounds, we do not reach these issues here.

- (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;
- (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 primarily to obtain immigrant status.<sup>2</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, 376 (AAO 2010).

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<sup>2</sup> 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>.

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in El Salvador on [REDACTED] and entered the United States without inspection, admission, or parole on December 14, 2012. On [REDACTED] 2015, when the Petitioner was [REDACTED] years old,<sup>3</sup> the Family Court of the State of New York, [REDACTED] New York (juvenile court) issued a *Temporary Order Appointing Guardian of the Person* (guardianship order), awarding guardianship of the Petitioner to her sister-in-law, T-R-<sup>4</sup> and an *Order-Special Juvenile Status* (SIJ court order), making specific findings related to the Petitioner's eligibility for SIJ classification.

## III. ANALYSIS

Upon *de novo* review of the record, as supplemented on appeal, the Petitioner has not overcome the grounds for denial. The Director determined that the record did not establish that the Petitioner was the subject of a valid dependency or custody order because the juvenile court guardianship order was not a final order and was deficient.

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. The juvenile court order here expressly awarded only temporary guardianship of the Petitioner to T-R- and indicated that it would expire the day before the Petitioner's [REDACTED] birthday on [REDACTED] 2015. The record does not show that the court subsequently issued a final guardianship order. The temporary nature of the guardianship order is incompatible with the non-viability determination in the separate SIJ court order issued in the same guardianship proceedings, and thus, cannot establish that "family reunification is no longer a viable option," where the Petitioner has not shown that the court proceedings resulted in a final guardianship order. *See* section 235(d)(5) of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457 (providing that a court-appointed custodian acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility); *see also* Neufeld Memorandum, *supra*, at 2.

On appeal, the Petitioner asserts that under New York state law, a guardianship order, such as the one at issue here, is the common method of obtaining evidence of dependency for purposes of section 101(a)(27)(i). She asserts that USCIS erred in relying on a flawed and inaccurate interpretation of section 235(d)(5) to conclude that a temporary guardianship order is not a qualifying dependency order. She distinguishes the guardianship proceedings here from the proceedings referenced in section 235(d)(5) addressing scenarios where a state appointed person or entity acts *in loco parentis* temporarily towards the minor child. The Petitioner maintains that unlike

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<sup>3</sup> The record indicates that the juvenile court assumed jurisdiction over the Petitioner as a minor until the age of 21 in accordance with New York state law. The guardianship order, which indicates that the Petitioner consented to the appointment of a guardian, cites to section 661 of the New York Family Court Act, which defines 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 the age 18.

<sup>4</sup> We provide the initials of individual names throughout this decision to protect identities.

guardianship proceedings in New York which invests profound legal responsibilities on the legal guardian, the *in loco parentis* doctrine applies only in short-term circumstances in which the parents explicitly entrust the *in loco parentis* with the care of their child. This distinction, she asserts, is sufficient to demonstrate that a temporary guardianship order can establish legal guardianship for purposes of the dependency requirements of the Act.

The Petitioner is correct that a New York guardianship order may demonstrate the dependency and/or custody requirements of section 101(a)(27)(J)(i) of the Act. However, as noted, the guardianship order here was issued as a temporary order and did not result in a final resolution of the underlying guardianship petition. Although we acknowledge that the *in loco parentis* doctrine is legally distinct from a court order of guardianship or custody, section 235(d)(5)'s reference to the doctrine serves an illustrative purpose in demonstrating that temporary or short-term appointments of guardianship or custody by a juvenile court cannot satisfy the dependency and/or custody requirement under section 101(a)(27)(J)(i) of the Act. *See also* Neufeld Memorandum, *supra*, at 2. The Petitioner does not cite to any legal or binding authority to the contrary.

The Petitioner also contends that the guardianship order and SIJ court orders here are separate and distinct and thus, the temporary nature of the guardianship order did not affect or negate the finality of juvenile court's findings (including the non-viability determination) in the separate SIJ order. However, our review of the record shows that the two orders go hand in hand, having been issued together on the same date in the same guardianship proceedings. Moreover, those proceedings did not result in a final disposition of the underlying guardianship petition to establish the finality of the juvenile court findings.<sup>5</sup> Accordingly, the record does not demonstrate that the SIJ court order is a final order. Moreover, regardless of whether the juvenile court had rendered the requisite non-viability determination in a separate and final order, as noted, the temporary nature of the guardianship order is not compatible with and cannot satisfy the statutory requirement that the Petitioner demonstrate that "family reunification is *no longer* a viable option." Section 101(a)(27)(J)(i) of the Act (emphasis added). As the juvenile court order here is not a final order, the Petitioner has not established her eligibility for SIJ classification under the Act.

#### 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, that burden has not been met.

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<sup>5</sup> We disagree with the Petitioner's assertion on appeal that the temporariness of the guardianship order is a moot point simply because the validity of the order lasted only until the Petitioner reached 21 years of age (both by the terms of the order and by statute) and was thus, permanent with respect to the duration of her childhood. A temporary award of guardianship is indicative that a final disposition on issues of dependency and guardianship remain outstanding during the relevant period of the Petitioner's minority under New York law. As discussed, such a temporary order of dependency or guardianship cannot establish that parental reunification is not viable as required under the Act.

*Matter of M-E-C-R-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-E-C-R-*, ID# 18159 (AAO Aug. 11, 2016)