



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

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

MATTER OF J-A-M-

DATE: AUG. 15, 2016

APPEAL OF BOISE, IDAHO 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, Boise, Idaho, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition). The Director concluded that the Petitioner had sought SIJ classification primarily for immigration purposes.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that he has provided sufficient evidence to establish that he has been abandoned by both parents.

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;

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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.<sup>1</sup>

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in the Democratic Republic of Congo on [REDACTED]. His uncle, [REDACTED] filed a Petition for Order Appointing Guardian of a Minor (guardianship petition) in the District Court of the [REDACTED] Idaho (juvenile court) on [REDACTED] 2011.

According to an affidavit filed with the juvenile court, [REDACTED] indicated that his sister is the Petitioner's mother, and that she and the Petitioner's father had abandoned the Petitioner in [REDACTED] care. [REDACTED] attested that he had not heard from them in approximately 12 months. [REDACTED] also asserted that the Democratic Republic of Congo is in "upheaval" and that there "is no telling if, or when . . . [the Petitioner's parents] will be able to return to the U.S." to unite with the Petitioner.

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<sup>1</sup> H.R. Rep. No. 105-405, 105th. Cong., 1st Sess., at 130 (1997); see also Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS Policy Memorandum, *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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On [REDACTED] 2012, a guardian *ad litem* reported to the juvenile court that the whereabouts of the Petitioner's mother and father are unknown, that his mother had been missing since July of 2010, and that his father "has never maintained any relationship" with the Petitioner. On [REDACTED] 2012, the court ordered [REDACTED] guardian over the Petitioner. On [REDACTED] 2012, the court issued an amended guardianship order that included certain findings relevant to SIJ classification.

The Petitioner filed his first SIJ petition on January 28, 2013, and the Director denied it after concluding that the Petitioner sought SIJ classification for the primary purpose of obtaining status as a lawful permanent resident rather than as relief from abuse, neglect, or abandonment. The Petitioner filed the instant SIJ petition on December 15, 2014. On March 30, 2015, the Director issued a request for evidence to obtain further information about the purpose of the Petitioner's father's presence in the United States on August 5, 2014, the date he had allegedly signed an affidavit in which he attested that he had abandoned the Petitioner. The Director also requested a copy of the identity documents presented by the Petitioner's father to the notary public who had notarized the affidavit. The Petitioner responded with additional evidence, but the Director denied the SIJ petition, concluding that the Petitioner had sought SIJ classification primarily for immigration purposes.

On appeal, the Petitioner states that he has not had contact with either of his parents in five years, that his parents abandoned him, and that his request for SIJ classification is *bona fide* rather than for the primary purpose of obtaining status as a lawful permanent resident.

### III. ANALYSIS

When adjudicating an SIJ petition, 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 due to abuse, neglect or abandonment, or a similar basis under state law; and that return is not in a petitioner's best interests, as stated in sections 101(a)(27)(J)(i) and (ii) of the Act. USCIS requires the factual basis<sup>2</sup> for the court's findings so it may fulfill its required consent function. See section 101(a)(27)(J)(iii) of the Act. Although we do not require a court order to be overly detailed, if it only recites the statutory requirements from the Act and the record of proceedings does not provide the factual basis for the findings then the order is generally not sufficient for USCIS to grant consent. The order must reflect that the court made an informed decision for each of the required findings. Orders that include or are supplemented by the findings of fact will usually satisfy section 101(a)(27)(J)(iii) of the Act.<sup>3</sup>

When exercising his consent function, the Director improperly determined that the Petitioner had not been abandoned by one or both parents, as the record of proceedings contains the provision of Idaho law that the juvenile court relied upon to make its abandonment finding. Accordingly, we must

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<sup>2</sup> A "factual basis" means the facts upon which the juvenile court relied in making its rulings or findings.

<sup>3</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 court's rulings).

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withdraw that portion of the Director's decision. Nevertheless, the Petitioner remains ineligible for SIJ classification for the following reasons.

The juvenile court granted custody of the Petitioner to his uncle, [REDACTED] after determining that the Petitioner had been abandoned by his parents as that term is defined under Idaho law. However, the court did not make a finding about the viability of parental reunification based on its abandonment finding, as required under section 101(a)(27)(J)(i) of the Act. The juvenile court only concluded that it is not in the Petitioner's best interest to return to the Democratic Republic of Congo "due to the inability of various relatives to ascertain the whereabouts of the [Petitioner's] parents in the Congo, the instability of the Congo at this time, and no adults in the Congo petitioning this Court for guardianship." Without a non-viability of reunification finding, the juvenile court order does not meet the requirements under section 101(a)(27)(J)(i) of the Act.

Regarding the issue of consent to a grant of SIJ classification to the Petitioner, we concur with the Director that the record of proceedings contains evidence that casts doubt on the *bona fides* of the Petitioner's request for SIJ classification, and raises the question of whether the juvenile court was provided with sufficient facts to make an informed decision regarding its best interest determination.

In his February 2012 report, the guardian ad litem told the juvenile court that the Petitioner's father "never maintained *any relationship* with [the Petitioner](emphasis added)." However, the Petitioner entered the United States as a B-2 visitor in July 2010 along with his mother, father, and two sisters. According to the Department of State's notes from the family's consular interview, nonimmigrant visas were issued based on: "Parents and 3 children to visit Texas for vacation . . . Parents have prior EUR and US travel; children have prior EUR only." The family's applications for nonimmigrant visas as a family unit, and assertions to the U.S. consulate that they were taking a family vacation here, contradict the guardian ad litem's assertion to the juvenile court that the Petitioner and his father never maintained "any relationship." Accordingly, it does not appear that the juvenile court made an informed decision regarding its best interest determination because it was unaware of the role that the Petitioner's father had in arranging for the Petitioner to travel to the United States. *See Yeboah v. U.S. Dep't of Justice*, 345 F.3d 216 (3d Cir. 2003)(providing that USCIS may consider the role of a parent in arranging for a Petitioner's travel to the United States in its determination of whether a juvenile court order was sought to obtain lawful immigration status, rather than to gain relief from parental abuse, abandonment, or neglect). Consequently, even if the juvenile court order contained the required non-viability of reunification finding, USCIS' consent to a grant of SIJ classification would not be warranted.

#### IV. CONCLUSION

In summary, the juvenile court order does not contain the required non-viability of reunification determination required by section 101(a)(27)(J)(i) of the Act, and USCIS' consent to the grant of SIJ classification is not warranted because evidence in the record of proceedings does not show that the juvenile court made an informed decision in its best interest determination.

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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 J-A-M-*, ID# 16093 (AAO Aug. 15, 2016)