



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

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

MATTER OF W-N-B-J-

DATE: AUG. 23, 2016

APPEAL OF CHARLOTTE, NORTH 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, Charlotte, North Carolina, denied the petition. The Director concluded that the juvenile court order was not valid because it lacked the requisite language that reunification was not viable due to abuse, abandonment, or neglect, and that United States Citizenship and Immigration Services (USCIS) consent was not warranted.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that he is the subject of a valid juvenile court order and that the record demonstrates a reasonable factual basis for the juvenile court's non-viability determination.

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

#### I. APPLICABLE LAW

Section 203(b)(4) of the Act allocates immigrant visas to qualified SIJs as described in section 101(a)(27)(J) of the Act. 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 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>1</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 (AAO 2010).

## II. ANALYSIS

The Petitioner, a citizen of Guatemala, entered the United States without inspection, admission, or parole. On [REDACTED] 2015, when the Petitioner was [REDACTED] years old, the General Court of Justice, District Court Division, [REDACTED] North Carolina, (juvenile court) granted custody of the Petitioner to his father. In the order, the juvenile court found that the Petitioner's mother had abandoned him, that the Petitioner continues to be eligible for long-term foster care and so family reunification is not viable, and that it is not in the Petitioner's best interest to be returned to Guatemala.

The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), based on the juvenile court order. The Director issued a notice of intent to deny (NOID), notifying the Petitioner that USCIS' consent to a grant of SIJ classification was not warranted

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<sup>1</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>.

because the order did not contain the requisite language that reunification was not viable because of abuse, abandonment, or neglect; essentially that the order did not make a connection between Petitioner's abandonment and the non-viability of family reunification. However, we find that although the juvenile court order does not explicitly make a connection between the abandonment and the non-viability of family reunification, the court's finding that family reunification is not viable was clearly based on the fact that the Petitioner's mother abandoned him, as there was no other basis for a finding that the Petitioner is eligible for long-term foster care in the order. Insofar as the Director found otherwise, his decision is withdrawn.

However, the Director correctly found that the Petitioner's SIJ petition does not warrant USCIS consent. When adjudicating an SIJ petition, USCIS examines a 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 interest determination, as required by subsections 101(a)(27)(J)(i) and (ii) of the Act. USCIS requires the factual basis for a juvenile court's findings so it may fulfill its required consent function.<sup>2</sup> 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.<sup>3</sup>

The juvenile court order here includes the following support for its finding that reunification of the Petitioner with one or both of his parents is not viable due to abandonment:

[The Petitioner's mother] has not provided emotional or physical support for minor child for the majority of his life.

The juvenile court did not provide any support or explanation for its determination that it is not in the best interest of the Petitioner to be returned to Guatemala.

The record of proceedings does not provide a reasonable factual basis for the juvenile court's ruling that the Petitioner was abandoned by his mother. The juvenile court order states that the Petitioner was abandoned but does not state a basis for this finding other than to mention that the Petitioner's mother has not provided emotional or physical support for him. In response to the NOID, the Petitioner submitted the Complaint for Child Custody that he submitted to the juvenile court. The Complaint states generally that the Petitioner's mother abandoned him, that she is unable to care for him, and that she left him in Guatemala without care and support for seven years. The Petitioner also submitted an affidavit. However, there is no evidence that this affidavit was ever submitted to or considered by the court in the custody proceedings.

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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), <https://www.uscis.gov/laws/policy-memoranda>.

On appeal, the Petitioner asserts that the court made a determination that the Petitioner's mother was absent from his life for more than 6 months, that she had not provided for him for the majority of his life, that she abandoned him in North Carolina, and that this information is sufficient under North Carolina law to support a finding of neglect and abandonment. However, as we noted earlier in this decision, USCIS cannot fulfill its consent function under section 101(a)(27)(J)(iii) of the Act absent the facts upon which the juvenile court relied in making its rulings or findings. The Complaint that the Petitioner submitted to the juvenile court for factual findings in support of SIJ classification only asserted that the Petitioner's mother abandoned him and was unable to care for him. It did not set forth any facts for the court's consideration to establish his claim of parental abandonment. Accordingly, the record of proceedings does not establish the factual basis for the juvenile court's ruling that the Petitioner's reunification with one or both of his parents is not viable due to abandonment.

Similarly, there is no factual basis for the juvenile court's best interest determination. The best interest determination is a deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of a petitioner to be returned to a placement in the country of nationality or last habitual residence of the petitioner or his or her parents. A finding that a particular custodial placement is the best alternative available to a petitioner in the United States does not necessarily establish that a placement in a petitioner's country of nationality would not be in the petitioner's best interest.<sup>4</sup> Other than stating generally that it is not in the Petitioner's best interest to be removed from the United States and returned to Guatemala, there is no evidence in the record regarding what information was taken into account by the juvenile court in making its best interest determination. Neither the custody order nor the Complaint contains specific facts supporting the court's findings. The record of proceedings does not contain, for example, any separate findings of fact accompanying the orders, or an affidavit from the juvenile court or the Petitioner's guardian summarizing the evidence that was presented to support the juvenile court's orders. *See USCIS Memo #3 at 5* (describing the types of evidence that USCIS may request and consider when making a consent determination). Accordingly, the present record lacks sufficient evidence to provide a reasonable factual basis for the juvenile court's determinations and to warrant the agency's consent to the Petitioner's request for SIJ classification, as required by section 101(a)(27)(J)(iii) of the Act.

Based on the preceding discussion, the consent of USCIS to a grant of SIJ classification in this case, as required by section 101(a)(27)(J)(iii) of the Act, is not warranted. Accordingly, the SIJ petition is not approvable and the Petitioner remains ineligible for SIJ classification.

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<sup>4</sup> *See Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status*, 58 Fed. Reg. 42843, 42848 (Aug. 13, 1993).

### III. 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of W-N-B-J-*, ID# 17739 (AAO Aug. 23, 2016)