



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

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

MATTER OF C-B-R-C-

DATE: AUG. 26, 2016

APPEAL OF RALEIGH-DURHAM, 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-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, Raleigh-Durham, North Carolina, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition). The Director concluded that the Petitioner's adoption decree lacked the requisite SIJ determination that parental reunification was not viable. The Director further determined that the juvenile court's second order containing findings relating to SIJ classification was also deficient as: (1) the order was issued when the Petitioner was over 18 years of age and not a minor under state law; and (2) the non-viability determination in the order was deficient. Lastly, the Director held that the record indicated that the juvenile court orders were sought solely for obtaining lawful permanent residence status and not for the purpose of obtaining relief from abuse, neglect, or abandonment.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the record establishes that the juvenile court concluded that reunification with the Petitioner's parents was not viable and that it was not in the Petitioner's best interest to be returned to his country of nationality.

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

I. 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;
- (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.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).

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>.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The record reflects that the Petitioner was born in El Salvador on [REDACTED] and entered the United States without inspection, admission, or parole on January 28, 2013. On [REDACTED] 2014, when the Petitioner was [REDACTED] years old, the General Court of Justice, District Court Division, in [REDACTED] North Carolina (juvenile court) issued a *Decree of Adoption*, granting the petition for adoption of the Petitioner by his aunt. On [REDACTED] 2014, when the Petitioner was [REDACTED] years of age, the juvenile court issued a second order in the same adoption proceedings, in which the court made specific findings related to the Petitioner's eligibility for SIJ classification, but adjourned the matter to determine whether the adoption would be in the Petitioner's best interest in light of its possible adverse impact on his eligibility for SIJ classification. On [REDACTED] 2014, the court issued a subsequent order deeming the adoption decree valid and proper in all respects.

III. ANALYSIS

Upon *de novo* review of the record, as supplemented on appeal, the Petitioner has not overcome the grounds for denial.

A. The Adoption Decree and the [REDACTED] 2014 Juvenile Court Order Lack the Requisite Judicial Determinations

The record indicates that both the adoption decree and the [REDACTED] 2014 court order are deficient for purposes of satisfying the requirements of 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. As the Act explicitly defers findings on issues of child welfare under state law to the expertise and judgment of the juvenile court, we limit our review of the sufficiency of the order to determining only whether 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. We may not infer a finding of non-viability or best interest determination by the juvenile court based on other evidence of record.

The Petitioner's adoption decree does not contain the requisite non-viability and best interest² determinations by the juvenile court. Specifically, the adoption decree contains no determination by the juvenile court that reunification is not viable. Further, although the order generally indicates that the "adoption . . . sought is in the best interest of the child," it does not clarify that it is not in the Petitioner's best interest to be returned to El Salvador. Similarly, although the [REDACTED] 2014 juvenile court order does include the requisite best interest determination, the non-viability determination in the order is deficient as it merely mirrors the statutory language that parental reunification was not

² The Director did not specifically address the lack of a best interest determination in the adoption decree or the [REDACTED] 2014 court order as a basis for denial of the SIJ petition.

Matter of C-B-R-C-

viable due to “abuse, neglect, or abandonment,” without specifying which of the three grounds under state law supported the determination, as required by the Act.

On appeal, the Petitioner contends that because the adoption decree severed the parent-child relationship between the Petitioner and his biological parents, reunification with his parents was not viable. He maintains that the juvenile court “specifically found, by the preponderance of the evidence” that the Petitioner “had been abused, neglected, or abandoned and thus reunification with both parents was unachievable.” The Petitioner further contends that where a juvenile court order contains the requisite findings regarding abuse, abandonment, or neglect, USCIS should not require additional proof that the abuse, abandonment, or neglect occurred. However, as indicated, our review indicates that the adoption decree contained no such findings regarding abuse, abandonment, or neglect and did not include a best interest determination. Further, the [REDACTED] 2014 juvenile court order simply recited the statutory language without identifying the specific ground(s) under state law on which the non-viability determination was made. Moreover, contrary to the Petitioner’s assertion, the court did not make any factual findings³ at all to support the conclusion that the Petitioner had been subjected to abuse, neglect, or abandonment and to clarify the basis on which the court rendered its non-viability determination. Accordingly, the juvenile court orders here do not satisfy the statutory requirements of sections 101(a)(27)(J)(i) and (ii) of the Act.

B. The [REDACTED] 2014 Court Order Was Not Issued in Accordance with State Law

In addition to the deficiencies listed above, as determined by the Director, the Petitioner has not established that the [REDACTED] 2014 order was issued in accordance with state law. *See* sections 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(3) (requiring declarations of dependency by a juvenile court to be made in accordance with state law). The record indicates that the adoption proceedings were brought pursuant to Chapter 48 of the North Carolina General Statutes. Section 48-1-101(10) of the North Carolina General Statutes defines “minor” as an individual under 18 years of age who is not an adult.⁴ *See also* N.C. Gen. Stat. § 48A-2 (defining minor as “any person who has not reached the age of 18 years”). Here, the Petitioner did not meet the definition of “minor” under state law when the juvenile court issued the [REDACTED] 2014 order as he was already over the age of [REDACTED]. Although the court order references the Petitioner as a “minor child” in rendering findings related to SIJ classification, it did not identify the statutory or legal authority under North Carolina state law on which the court relied in assuming jurisdiction over the Petitioner as a minor child when he was no longer a minor child under state law. Consequently, the Petitioner has not demonstrated that the 2014 juvenile court order was issued in accordance with state law, as required.

³ USCIS requires the factual basis for the juvenile court’s findings of non-viability of parental reunification in order to fulfill its required consent function. A “factual basis” means the facts upon which the juvenile court relied in making its rulings or findings. *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>.

⁴ Section 48-1-101(3) of the North Carolina General Statutes defines “adult” as “an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable state law.”

(b)(6)

Matter of C-B-R-C-

C. USCIS Consent Is Not Warranted

As indicated, pursuant to section 101(a)(27)(J)(iii), the Petitioner's request for SIJ classification must warrant USCIS consent. The Petitioner must establish that his request for SIJ classification is *bona fide*; in essence 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.⁵ In order to fulfill its consent function, USCIS requires a factual basis for a juvenile court's non-viability of parental reunification and best interest determinations.⁶ 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.⁷

The Director found that the Petitioner's adoption after his [REDACTED] birthday rendered him ineligible to immigrate to the United States as a "child" under the Act and therefore concluded that his primary intention in seeking a juvenile court order was to obtain lawful status in the United States and not primarily to gain relief from abuse, neglect, or abandonment. We withdraw the Director's determination on this basis. As previously discussed, when adjudicating an SIJ petition, we examine 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. We are 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). Thus, we examine the relevant evidence only to ensure that the record contains a reasonable factual basis for the court's order.⁸ Here, rather than inquiring into whether there was a reasonable factual basis for the court's judicial determinations, the Director impermissibly conjectured that because the Petitioner's late adoption meant he could not immigrate under the Act as a child, this necessarily indicated that the Petitioner primarily sought the juvenile court order to gain lawful status. The Petitioner's adoption, however, does not preclude USCIS from consenting to a grant of SIJ classification where the record otherwise establishes a petitioner's statutory eligibility and a reasonable factual basis for the juvenile court's best interest and non-viability determinations. We therefore withdraw the Director's decision insofar as it went behind the requisite juvenile court orders to draw a subjective conclusion that the Petitioner's request for SIJ classification was not *bona fide*.

However, notwithstanding this determination, the present record does not establish a reasonable factual basis for the juvenile court's non-viability and best interest determinations. As noted previously, the [REDACTED] 2014 juvenile court did not make any factual findings regarding abuse, neglect, or abandonment by the Petitioner's parents in order to support and provide a basis for the court's

⁵ H.R. Rep. No. 105-405, *supra*; see also Neufeld Memorandum, *supra*, at 3.

⁶ See Yates Memorandum, *supra*, at 4-5.

⁷ See *id.*

⁸ See *id.*

(deficient) non-viability determination. Likewise, the court made no factual findings to provide a reasonable factual basis for its determination that it was not in the Petitioner's best interest to be returned to El Salvador.

On appeal, the Petitioner submits an affidavit detailing the physical abuse he claims to have suffered at the hands of his father and the neglect to which both his parents subjected him in El Salvador. He indicated in his statement that the abuse he suffered continued until he left his home to come to the United States. However, although we recognize the Petitioner's claims of the hardships he has encountered as a result of his parents' conduct, USCIS' role here is not to make the factual findings necessary to provide a reasonable basis for the juvenile court's non-viability and best interest determinations. Thus, we may not consider the Petitioner's affidavit to make the factual findings in the first instance to conclude that the non-viability and best interest determinations are supported in the record. Instead, as the Petitioner himself notes, we are limited to examining the record solely to determine whether the juvenile court made the factual findings required to establish a reasonable factual basis for the requisite judicial determinations by the court. Here, as discussed, the juvenile court made no factual findings at all. Moreover, the Petitioner's affidavit is dated after the filing of his SIJ petition, and the Petitioner has not established that the juvenile court was informed of, considered, or relied on the facts asserted in the affidavit in rendering the requisite determinations. The record, therefore, does not provide a reasonable factual basis for the juvenile court non-viability and best interest determinations. Accordingly, 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.

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.

ORDER: The appeal is dismissed.

Cite as *Matter of C-B-R-C-*, ID# 17664 (AAO Aug. 26, 2016)