



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

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

MATTER OF M-H-P-

DATE: FEB. 4, 2016

APPEAL OF CHICAGO, ILLINOIS FIELD OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks classification as a special immigrant juvenile. *See* Immigration and Nationality Act (the Act) §§ 101(a)(27)(J) and 203(b)(4), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The Field Office Director, Chicago, Illinois, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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.¹ 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;

¹ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). *See* section 235(d) of the TVPRA H.R. Rep. No. 105-405 at 130 (1997). *See also* Memorandum from Donald Neufeld, Acting Associate Director, USCIS, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 3* (Mar. 24, 2009), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf.; The SIJ provisions of the TVPRA are applicable to this appeal. *See* section 235(h) of the TVPRA.

Matter of M-H-P-

(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[.]

II. FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in India on [REDACTED]. He entered the United States without inspection, admission, or parole on February 18, 2013. On [REDACTED] the Circuit Court of [REDACTED] Illinois, County Department - Probate Division (juvenile court) granted the Petitioner's uncle custody over him. *See Custody Order*, Ill. Cir. Ct. Cty. Div. Case No. [REDACTED]. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 30, 2013. The Director issued a notice of intent to deny the petition (NOID) and on December 31, 2014, the Director denied the Petitioner's request for SIJ classification because the Petitioner did not establish that his request for SIJ classification is *bona fide* and merits the agency's consent. The Director also determined that the record did not provide a reasonable factual basis for the requisite nonviability of reunification and best interest determinations. The Petitioner timely appealed. Upon our initial review of the appeal, we determined that the Director erred in denying the Petitioner's Form I-360 based on issues surrounding the Petitioner's entry into the United States and misrepresentations by the Petitioner's parents, but that the Director correctly determined that the record did not contain sufficient evidence to establish a reasonable factual basis for the requisite best interest determination. We, therefore, issued to the Petitioner a request for evidence (RFE) on October 1, 2015, incorporated here by reference.

III. ANALYSIS

In our RFE, we fully discussed the pertinent facts, relevant evidence submitted below, and the remaining deficiencies of the record. Accordingly, we will only address the evidence submitted in response to the RFE issued on appeal. In response to the RFE issued on appeal, the Petitioner submits a notarized personal statement and personal statements from friends and family.

Matter of M-H-P-

In his brief, notarized declaration submitted on appeal, the Petitioner states that he cannot return to his family home because his father does not want him there. He states that he does not have anywhere to go in India and it would be very hard to survive. In his declaration, the Petitioner's uncle, [REDACTED] states that the Petitioner's father is a danger to him and that if the Petitioner were required to return to India, there will be no one there to help him. [REDACTED] states that he knew the Petitioner in India and witnessed the Petitioner's parents abuse him. [REDACTED] states that he has known the Petitioner for many years and witnessed the Petitioner be mistreated by his family and told that he is not welcome there. The Petitioner's teacher, [REDACTED] states that the Petitioner told him that he was beaten by his parents.

The juvenile court order states only that there are no family members in India to care for the Petitioner but does not state the basis for this assessment such to warrant the agency's consent to the Petitioner's request for SIJ classification. There is no evidence that the statements submitted in response to the RFE were taken into account by the juvenile court in making its best interest determination. As such, the evidence in the record does not show a reasonable factual basis for the juvenile court's determination that it is not in the Petitioner's best interest to be returned to India pursuant to section 101(a)(27)(J)(i) of the Act. Consequently, the present record does not support 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.

IV. CONCLUSION

In this case, as in all visa petition proceedings, the Petitioner bears the burden of proof to establish his eligibility. *See* 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 M-H-P-*, ID# 14044 (AAO Feb. 4, 2016)