



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

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

MATTER OF A-M-M-G

DATE: FEB. 8, 2016

MOTION ON ADMINISTRATIVE APPEALS 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) §§ 101(a)(27)(J) and 203(b)(4), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The Field Office Director, Bloomington, Minnesota, denied the petition. We dismissed a subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

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. *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 for Domestic Operations, USCIS, USCIS, HQOPS 70/8.5, *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 A-M-M-G-

(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 status. 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.²

II. PERTINENT FACTS

The record reflects that the Petitioner was born in Mexico on [REDACTED]. The Petitioner claims that he entered the United States on or about February 10, 1998, without inspection, admission, or parole. On [REDACTED] the District Court, Probate Division, [REDACTED] (probate court) granted guardianship and conservatorship of the Petitioner to [REDACTED]. *See Order Appointing: Guardian Conservator*, Dist. Ct. Prob. Div. [REDACTED].

The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on February 6, 2012. The Director determined that the probate court did not act as a juvenile court in the Petitioner's guardianship proceedings, and therefore, the Petitioner did not establish that he obtained a juvenile court order as required by section 101(a)(27)(J)(i) of the Act. In our July 31, 2015, decision we affirmed the Director's determination and dismissed the appeal. On motion, the Petitioner asserts that our decision was in error and we should find that the Petitioner qualifies for SIJ status.

² H.R. Rep. No. 105-405 at 130 (1997); *see also* Neufeld Memorandum, *supra*, at 3.

Matter of A-M-M-G-

We review these proceedings *de novo*. A full review of the record does not establish the Petitioner's eligibility. The motion will be denied for the following reasons.

III. ANALYSIS

Our July 31, 2015, decision is incorporated here by reference. In summary, we found that the record did not demonstrate that the Petitioner was treated as a juvenile at the time the court order was issued. We explained that the probate court instead elected to treat the petitioner as an incapacitated adult. We concluded that the guardianship order is insufficient because the probate court did not assert its jurisdiction over the Petitioner as a juvenile, as required by section 101(a)(27)(J)(i) of the Act.

On motion, the Petitioner asserts that our "restrictive interpretation" of the term "juvenile court" is contrary to the regulations and under Minnesota law, the probate division of the district court has the same jurisdiction as a juvenile court in the context of guardianship of minors. As discussed in our previous decision, the term "juvenile court," as used in section 101(a)(27)(J)(i) of the Act, is defined as a court "having jurisdiction under state law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). A dependency or custody order issued by a court with jurisdiction over both adults and juveniles will only suffice if the record shows that the court exercised jurisdiction over the Petitioner as a juvenile. *See* 8 C.F.R. § 204.11(c)(3) (requiring the court order to be in compliance with state law governing juvenile court dependency). As we explained, in this case, the Petitioner was placed under the guardianship and conservatorship of [REDACTED] on [REDACTED] when he was [REDACTED] years old, two days prior to his 18th birthday. The probate court based its ruling on section 524.5-309 of the Minnesota Statutes, which specifies who may qualify to serve as a guardian, and section 524.5-313 of the Minnesota Statutes, which provides the powers and duties of the guardian. Section 524.5-313 of the Minnesota Statutes, in relevant part, states that the "court may appoint a guardian if it determines that all the powers and duties listed in this section are needed to provide for the needs of the incapacitated person." Minn. Stat. Ann. § 524.5-313(c) (West 2012). Here, the probate court made the guardianship determination based on a finding that the Petitioner is an incapacitated person, but did not assert its jurisdiction over the Petitioner as a minor pursuant to section 524.5-201 of the Minnesota Statutes (pertaining to the appointment and status of a guardian of a minor ward).

The Petitioner further asserts that we overlooked the fact that the term "incapacitated person" could include minors. The Petitioner states that [REDACTED] filed the petition for guardianship with the probate court instead of the juvenile court because the probate court could hear the matter immediately. He asserts that court records show that [REDACTED] sought guardianship and conservatorship because he was an incapacitated minor suffering from neglect and abandonment. The court order shows that the probate court granted guardianship after a determination that the "[Petitioner] is incapacitated with regard to the person because the [the Petitioner] is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions concerning [the Petitioner's] personal needs for medical care, nutrition, clothing, shelter or safety." *Order Appointing: Guardian Conservator* at 1. The court order mirrors the definition of

“incapacitated person” found in the Minnesota Statutes. Under Minnesota law, the term “incapacitated person” means an individual who, *for reasons other than being a minor*, is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance.” Minn. Stat. Ann. § 524.5-102 (West 2012)(emphasis added). As the probate court made the guardianship determination based on a finding that the Petitioner is an incapacitated person, it did not assert its jurisdiction over the Petitioner as a minor. Consequently, the Petitioner has not demonstrated that his request for SIJ classification contains a custody or dependency order issued by a juvenile court, as required by section 101(a)(27)(J)(i) of 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.

ORDER: The motion to reconsider is denied.

Cite as *Matter of A-M-M-G-*, ID# 15860 (AAO Feb. 8, 2016)