



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

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

MATTER OF E-E-G-V-

DATE: FEB. 9, 2016

APPEAL OF CHARLESTON, SOUTH 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. *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, Charleston, South Carolina, 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 (SIJ) 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;

(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

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(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. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Guatemala on [REDACTED]. He entered the United States on or about March 21, 2014, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol Agents after his entry near [REDACTED] Arizona, was taken into the custody of the Office of Refugee Resettlement (ORR), and was issued a Notice to Appear in removal proceedings.

On [REDACTED] 2014, the Family Court of the Eleventh Judicial Circuit for [REDACTED] South Carolina (juvenile court), declared the Petitioner dependent on the juvenile court; consented to continuing custody of the Petitioner by his brother, [REDACTED] concluded that reunification of the Petitioner with his parents was not viable due to their unwillingness or inability to support and protect him from harm; and indicated that it would not be in the Petitioner's best interest to return to Guatemala. *See Order Regarding Minors' Eligibility for Special Immigrant Juvenile Status and Temporary Order*, Family Ct., 11th Judicial Cir., [REDACTED] (juvenile court order).

The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on December 9, 2014, based on the juvenile court order. The Director issued a notice of intent to deny (NOID) the Form I-360 based on a finding that the juvenile court order lacked a reasonable factual basis for the conclusion that reunification of the Petitioner with his parents was not viable. Additionally, the Director indicated that the Petitioner's statement to a U.S. Border Patrol Agent at the time of his apprehension conflicted with his statement during an interview with the Director, during which he discussed his reasons for leaving Guatemala and coming to the United States, and that both statements cast doubt on the factual findings of the juvenile court. Furthermore, the Director stated that the juvenile court order was temporary and therefore did not establish that reunification with the Petitioner's parents was not viable. The Petitioner responded to the NOID with a brief and additional evidence, which the Director found insufficient to overcome the grounds for the intended denial. The Director denied the Form I-360 and the Petitioner timely appealed.

III. ANALYSIS

We review these proceedings *de novo*. Review of the entire record, including the brief submitted on appeal, does not demonstrate the Petitioner is eligible for classification as an SIJ.

When adjudicating a Form I-360, USCIS examines the juvenile court order only to determine if it contains the requisite findings of dependency or custody; nonviability of reunification due to abuse,

neglect or abandonment; and that return is not in the petitioner's best interest, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. USCIS is 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). Accordingly, USCIS examines the relevant evidence only to ensure that the record contains a reasonable factual basis for the court's order. See Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQADN 70/23, *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions* (May 27, 2004), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf. Court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS' consent. Orders lacking specific factual findings are insufficient to warrant USCIS' consent and must be supplemented by other relevant evidence demonstrating the factual basis for the court's order. *Id.* at 5.

The juvenile court order states that the Petitioner's parents "cannot keep him safe and are unable or unwilling to support" him and, therefore, reunification with the Petitioner's parents "is not a viable option." The juvenile court also determined that the Petitioner was "subjected to physical harm and violent situations at the hands of local gang members" in Guatemala. The juvenile court order does not contain specific facts supporting its findings or describe the evidence the juvenile court considered, and the record of proceedings does not contain, for example, any separate findings of fact accompanying the juvenile court's order, or an affidavit from the juvenile court or the Petitioner's brother summarizing the evidence that was presented to support the juvenile court order. See Yates Memorandum, *supra*, at 5 (describing the types of evidence that USCIS may request and consider when making a consent determination). In addition, the juvenile court did not specify on which ground (e.g., abuse, neglect, abandonment, or a similar basis under state law) makes reunification with one or both of the Petitioner's parents not viable.

The Petitioner asserts in his brief on appeal that the juvenile court order need not include the basis for the juvenile court's findings. He alleges that the fact that the juvenile court issued the order implies that the juvenile court made specific factual findings, and that USCIS must not question the basis for those findings. Although USCIS is not the fact finder and defers to the expertise and judgment of the juvenile court, in this instance, the juvenile court did not make specific factual findings regarding the specific ground upon which reunification is not viable and did not supplement its order with other relevant evidence demonstrating the factual basis for the juvenile court order.

Regarding the Director's finding that the factual basis for the juvenile court's best interest determination was in question because the Petitioner made conflicting statements about why he left Guatemala and came to the United States and whether he feared returning there, the Petitioner explains that he was relying on advice from other detained individuals in order to shorten his length of detention. He further states that the Director did not ask him about his statements to the Border Patrol Agent, but that he was truthful in his responses to the Director's questions regarding his reasons for leaving Guatemala. In addition, the Petitioner asserts that the REAL ID Act of 2005,

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Div. B of Pub. L. No. 109-13, 119 Stat. 231 (enacted May 11, 2005) (REAL ID Act) applies to his case, and that we must consider the “totality of the circumstances” when considering the Petitioner’s credibility. The REAL ID Act does not apply to the Petitioner’s request for SIJ classification; it applies only “to applications for asylum, withholding, or other relief from removal” REAL ID Act, § 101(h)(2), 119 Stat. at 305; *see also Matter of S-B-*, 24 I&N Dec. 42, 43 (BIA 2006). Moreover, even if we accept the Petitioner’s explanations regarding his statements, the juvenile court order does not contain sufficient factual findings in support of its conclusion and does not provide a specific finding of abuse, neglect, abandonment or a similar basis under South Carolina law as the basis for the non-viability of reunification.

Additionally, the juvenile court issued a temporary order, indicating that the Petitioner’s brother, [REDACTED] [REDACTED] “currently maintains” guardianship over the Petitioner, and that [REDACTED] “shall be entitled to continue having full custody” of the Petitioner. The Petitioner does not dispute that the juvenile court order was temporary, but instead argues that the juvenile court order need not be permanent. Section 235(d)(5) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. 110-457, 122 Stat. 5044 (2008), provides that a court-appointed custodian who is acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility. The juvenile court’s award of the Petitioner’s brother as the Petitioner’s custodian through a temporary order is insufficient to demonstrate that reunification with one or both of the Petitioner’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. Accordingly, the relevant evidence in the record does not establish that the Petitioner is eligible for SIJ classification because the juvenile court order is deficient under section 101(a)(27)(J)(i) of the Act.

IV. CONCLUSION

The Petitioner did not establish that he was the subject of a qualifying juvenile court order. Consequently, the Petitioner does not meet the requirements at section 101(a)(27)(J)(i) of the Act and the Form I-360 will remain denied.

In these proceedings, the Petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of E-E-G-V-* ID# 15740 (AAO Feb. 9, 2016)