



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

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

MATTER OF V-M-M-C-

DATE: FEB. 12, 2016

APPEAL OF NEW YORK, NEW YORK 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) §§ 101(a)(27)(J) and 203(b)(4), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The Field Office Director, New York, New York, 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.<sup>1</sup> 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;

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<sup>1</sup> 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 for Domestic Operations, 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](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.

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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[.]

## II. FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in El Salvador on [REDACTED]. He entered the United States without inspection, admission, or parole, in September 2012 at the age of [REDACTED]. On [REDACTED], the Family Court of the State of New York, [REDACTED] (juvenile court), granted guardianship of the Petitioner to his mother, [REDACTED], when the Petitioner was [REDACTED] years old.<sup>2</sup> See Order Appointing Guardian of the Person, New York State Fam. Ct., [REDACTED] Docket No. [REDACTED].

The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on December 23, 2014, when he was [REDACTED] years old. The Director issued a request for evidence (RFE) for a copy of the Order of Special Findings for Immigrant Juvenile Status in the Petitioner's case. The Petitioner responded with copies of the guardianship order and an Order-Special Immigrant Juvenile Status issued by the juvenile court on [REDACTED]. On June 6, 2015, the Director denied the Petitioner's request for SIJ classification, because a juvenile court dependency or custody order for the Petitioner was not in effect at the time the Petitioner filed his Form I-360. The Petitioner timely appealed.

## III. ANALYSIS

We review these proceedings *de novo*. A full review of the record does not establish the Petitioner's eligibility. The Petitioner's assertions on appeal do not overcome the Director's grounds for denial.

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<sup>2</sup> The juvenile court order assumed jurisdiction over the Petitioner until the age of 21 with the Petitioner's consent, but did not cite to the relevant statutory authority for the court's jurisdiction over the Petitioner after he attained the age of 18. However, the Petitioner submits, on appeal, the underlying Petition for Appointment As Guardian of Person, which cites to section 661 of the New York Family Court Act, defining the term "minor" for purposes of guardianship as including a person less than 21 years of age who consents to the appointment or continuation of a guardian after age 18.

Beyond the determination of the Director, the present record lacks sufficient evidence to provide a reasonable factual basis for the juvenile court's best interest determination.<sup>3</sup> The appeal will be dismissed for the following reasons.

A. The Petitioner did not Submit Required Initial Evidence and was not Eligible for SIJ status at the Time of Filing

Pursuant to the regulation at 8 C.F.R. § 204.11(d)(2), a juvenile court dependency order must be submitted as initial evidence in support of the Form I-360. *See also* 8 C.F.R. § 103.2(b)(1) (each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other U.S. Citizenship and Immigration Services (USCIS) instructions). Here, the Petitioner did not submit the requisite juvenile court order with the initial filing of his Form I-360 on December 23, 2014. The record also indicates that the juvenile court did not issue the order until [REDACTED] over four months after the Form I-360 was filed, and the Petitioner only filed the order with the Director on [REDACTED] the Petitioner's 21st birthday. *See* Order Appointing Guardian of the Person, New York State [REDACTED]. The Petitioner is required to establish eligibility at the time of filing the immigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). Accordingly, the Petitioner was not eligible at the time of filing for SIJ classification as he did not submit the juvenile court order as requisite initial evidence with his Form I-360 and because no juvenile court dependency order had yet been issued at the time he filed the Form I-360 as required.

On appeal, the Petitioner contends that 8 C.F.R. § 103.2(b)(8) allows discretion in the consideration of additional and later-filed evidence, notwithstanding the initial evidence requirements under 8 C.F.R. § 204.11(d), and that he was eligible at the time of filing because his petition for guardianship was pending with the court when he filed his Form I-360. He further urges us to approve the Form I-360 "in equity" because he satisfied all the requirements for SIJ classification and is no longer eligible to refile his petition as he is now over the age of 21. We recognize the difficulty the Petitioner faces as he has now "aged out" for purposes of filing anew for SIJ classification based on the juvenile court order in these proceedings. However, although USCIS has discretion under C.F.R. § 103.2(b)(8)(ii) to request missing evidence to establish the Petitioner's eligibility, as the Director here did below, we are unaware of, and the Petitioner does not cite to, any authority that would allow USCIS to waive the requirement that a juvenile court dependency order be issued and filed, not merely pending, as initial evidence with the Form I-360 to establish eligibility for SIJ classification at the time of filing. 8 C.F.R. § 103.2(b)(1); 8 C.F.R. § 204.11(d); *see United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials); *see also* USCIS Policy Memorandum PM-602-0117, *Updated Implementation of the Special Immigrant Juvenile Perez-*

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<sup>3</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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*Olano Settlement Agreement 3* (June 25, 2015), available at [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624\\_Perez-Olano\\_Settlement\\_Agreement\\_PM\\_Effective.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624_Perez-Olano_Settlement_Agreement_PM_Effective.pdf).

The Petitioner also contends that pursuant to the settlement agreement in *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. 2005), his petition should not be denied because he was under twenty-one years old at the time he filed his Form I-360 as required and his dependency order has now expired based on his age. The Petitioner's reliance on the *Perez-Olano* settlement agreement is misplaced. Pursuant to the Stipulation enforcing the *Perez-Olano* settlement agreement, USCIS will not deny, revoke, or terminate a SIJ petition or an SIJ-based adjustment of status application (Form I-485) if, *at the time of filing the SIJ petition*: (1) the petitioner is or was under 21 years of age, unmarried, and otherwise eligible; *and* (2) the petitioner either is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age *prior to filing*.<sup>4</sup> Thus, the *Perez-Olano* settlement agreement and stipulation reinforce the initial evidentiary requirement that a juvenile court dependency order must have been issued prior to the Form I-360 filing in order to establish eligibility for SIJ classification as of the time of filing. The Petitioner here did not have a juvenile dependency order in effect prior to or at the time of his Form I-360 filing to establish his eligibility as of the date of filing, and thus the *Perez-Olano* settlement agreement does not apply.

The Petitioner also claims that the Director was "aware of [the Petitioner's] eligibility and denied his [Form] I-360 with the purpose of keeping him from reapplying as the decision was rendered well after his twenty first birthday." We find no merit to the Petitioner's assertion on appeal. The juvenile court order was only issued on [REDACTED], approximately a week before the Director issued an RFE and the Petitioner's 21st birthday. The Petitioner immediately submitted the order to USCIS, but unfortunately, the Petitioner was already 21 years of age as of the date of receipt by the Director. Thus, even if the Director had issued an RFE for the juvenile court order earlier, there was no court order in effect at the time for the Petitioner to submit and the Form I-360 would have been denied regardless. The record further shows that the Director timely issued a decision within one month of the Petitioner's response to the RFE and within 180 days of the Form I-360 filing.

#### B. The Record Does Not Contain a Reasonable Factual Basis for the Court's Best Interest Determination

Beyond the decision of the Director, even if the Petitioner filed the juvenile court order as initial evidence, the Form I-360 is not approvable because the record does not provide a reasonable, factual basis for the court's best-interest determination.

Section 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 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

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<sup>4</sup> See also USCIS Policy Memorandum PM-602-0117, *supra* at 4.

abuse, neglect, abandonment or a similar basis under state law, and not primarily to obtain immigrant status.<sup>5</sup> When adjudicating an SIJ petition, USCIS examines 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, 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, 8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (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.<sup>6</sup>

Here, the juvenile court order includes the requisite determination that it was not in the Petitioner's best interest to be returned to El Salvador, but does not forth a basis for the court's determination. Although the Petitioner submits the underlying petition for guardianship on appeal, it too contains no basis for the court's determination. The record, therefore, does not provide a reasonable factual basis for the juvenile court's best-interest determination and consequently, 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

The Petitioner's filing of a juvenile court order that was issued and filed with the Director only after the filing of Form I-360, does not conform to the regulatory requirements listed at 8 C.F.R. § 204.11(d) for required initial evidence. Further, as the order had not yet been issued at the time of the Form I-360 filing, the Petitioner was not eligible for SIJ classification at the time he filed, as required. 8 C.F.R. § 103.2(b)(1); *see also* USCIS Policy Memorandum PM-602-0117 at 3. Beyond the Director's decision, the record does not establish a reasonable factual basis for the juvenile court's best-interest determination. The Petitioner therefore has not established his eligibility for SIJ classification under section 101(a)(27)(J).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.

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<sup>5</sup> H.R. Rep. No. 105-405 at 130 (1997); *see also* Neufeld Memorandum, *supra* note 1, at 3.

<sup>6</sup> *See* Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQADN 70/23, Memorandum #3 - *Field Guidance on Special Immigrant Juvenile Status Petitions* 4-5 (May 27, 2004), [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/Archives%201998-2008/2004/sij\\_memo\\_052704.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

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**ORDER:** The appeal is dismissed.

Cite as *Matter of V-M-M-C-*, ID# 15461 (AAO Feb. 12, 2016)