



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

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

MATTER OF J-M-J-F-

DATE: JAN. 4, 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. *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, Charlotte, North Carolina, granted the petition, but later revoked it. We dismissed the 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 (SIJ) 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;

---

<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, 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](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.

(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[.]

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services (USCIS)].

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

## II. FACTS AND PROCEDURAL HISTORY

The Director revoked the petition based on the determination that the Petitioner did not to establish that she is subject to a qualifying juvenile court order which contains the requisite nonviability-of-reunification determination.<sup>2</sup> In our June 9, 2015, decision, incorporated here by reference, we

---

<sup>2</sup> As the approval of the Form I-360 was correctly revoked and we will uphold the revocation on the non-viability of reunification ground, we do not reach the additional issues identified by the Director regarding the identity of the Petitioner's father and whether the juvenile court record contained a reasonable factual basis for the court's order.

*Matter of J-M-J-F-*

dismissed the Petitioner's appeal, finding that 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," and that here, the juvenile court awarded the Petitioner's mother the "temporary care, custody, and control" of the Petitioner subject to another hearing on [REDACTED], 2014. See section 101(a)(27)(J)(i) of the Act; *Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED]. We also indicated that the juvenile court set a hearing date on the same day it issued the temporary custody order and the time interval between the two hearings was approximately three weeks, a time interval that we declined to consider "unreasonable" under state law. The juvenile court issued a custody order for the "temporary care, custody, and control" of the Petitioner for a defined period of time, and temporary custody orders in North Carolina may leave certain issues outstanding "pending the resolution of a claim for permanent custody." See *Regan v. Smith*, 509 S.E.2d 452, 454 (N.C. App. Ct. 1998). We found that the Petitioner's request that we treat the temporary custody order as permanent would require us to make a state court determination, but we are limited to the court's findings, which made only a temporary determination regarding the nonviability-of-reunification with the Petitioner's father.

Accordingly, we determined that the juvenile court's finding of nonviability-of-reunification with the Petitioner's father was issued on a temporary basis and did not establish that "family reunification is no longer a viable option." The Petitioner did not show that the court ultimately granted permanent custody to her mother. See Section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (providing that a court-appointed custodian who acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility).

Finally, we found that the Director did not deny the SIJ petition because the Petitioner "aged out" of the juvenile court's jurisdiction after she turned eighteen years of age. See N.C. Gen. Stat. Ann. § 48A-2 (West 2015)(defining a minor as "any person who has not reach the age of 18 years."). The Director was not prohibited by the *Perez-Olano* Settlement Agreement from denying the petition because the juvenile court order did not contain the requisite nonviability-of-reunification determination and therefore is deficient under section 101(a)(27)(J)(i) of the Act.

On motion, the Petitioner submits additional materials sufficient to meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3).

### III. ANALYSIS

The Petitioner's brief on motion and the relevant evidence in the record do not establish that the Petitioner is eligible for SIJ classification because the juvenile court order is deficient under section 101(a)(27)(J)(i) and (ii) of the Act. When adjudicating a petition for SIJ status, USCIS examines the juvenile court order only to determine if the order contains the requisite findings of dependency or custody; nonviability of family reunification due to parental abuse, neglect or abandonment; and the best-interest determination, as stated in section 101(a)(27)(J)(i) and (ii) of the Act. USCIS then reviews the relevant evidence to ensure that the record contains a reasonable factual basis for the court's determinations, which demonstrate that the court order was sought primarily to obtain relief

from abuse, neglect or abandonment. USCIS is not the fact finder in regards to 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) and (ii) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i) and (ii) (referencing the determinations of a juvenile court or other administrative or judicial body).<sup>3</sup> Where the record lacks evidence providing a reasonable factual basis for the juvenile court order, USCIS may request additional evidence from the petitioner to establish a reasonable basis for the agency's consent to SIJ classification.<sup>4</sup>

On motion, the Petitioner asserts that the juvenile court had temporary emergency jurisdiction to enter a temporary custody order under North Carolina's adoption of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). She also asserts that our reliance on *Regan v. Smith* is misplaced because the case does not discuss or contemplate the permanency of findings of fact leading to a determination that the trial court has jurisdiction under the UCCJEA to enter temporary orders. However, the Petitioner cites to no statute, regulation, or case law that would suggest that the holding in *Regan v. Smith*, that temporary custody orders exist for a defined period of time pending the resolution of a claim for permanent custody, is no longer valid. See 509 S.E.2d at 454. Neither we nor the Director dispute the juvenile court's jurisdiction to enter temporary custody orders under the UCCJEA.

The Petitioner cites to *In re N.R.M.*, 165 N.C. App. 294, 598 S.E.2d 147 (2004), to show that the finding of abandonment or endangerment is a threshold finding to determine jurisdiction because the court found that N.C.G.S. 50A-204 did not apply because it could not be determined that the child had been abandoned or was in immediate danger. The Petitioner further asserts that "non-viability of reunification is inherent in the threshold finding of abandonment" in order to establish the juvenile court's jurisdiction. The Petitioner cites to *In re E.X.J.*, 191 N.C. App. 34, 40, 662 S.E.2d 24, 27 (2008) *aff'd*, 363 N.C. 9, 672 S.E.2d 19 (2009), and *In re N.T.U.*, 760 S.E.2d 49, 54 (N.C. Ct. App.) *review denied*, 763 S.E.2d 517 (N.C. 2014), to show that a trial court may maintain jurisdiction even it fails to enter specific findings of fact regarding jurisdiction; it is only required that certain circumstances exist. However, these cases do not address the fact that a finding of abandonment, or that the child is subjected to or threatened with mistreatment or abuse,<sup>5</sup> is an emergency, temporary determination. Furthermore, the fact that a trial court need not make specific findings of fact in order to exercise jurisdiction under N.C.G.S. 50A-204 further supports that an emergency temporary order is not a final determination of nonviability-of-reunification with the Petitioner's father.

---

<sup>3</sup> See Memorandum from William R. Yates, USCIS, No. 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) (indicating that, where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

<sup>4</sup> *Id.* at 5.

<sup>5</sup> N.C.G.S. 50A-204 allows jurisdiction where a child is abandoned or subjected to or threatened with mistreatment or abuse.

The Petitioner also contends that we mischaracterized the reason for the Director's denial and argues that the Petitioner was unable to obtain a final custody order because she aged out, not because the temporary custody order expired as of the date of the next hearing. Both our and the Director's ultimate finding was the same – that the order was temporary. The Petitioner's contention that “but for” her age at the time of the subsequent hearing, she would have had a permanent order, is purely speculative. The fact remains that the Petitioner was only granted a temporary custody order. Accordingly, the Petitioner has not overcome our prior determination that she is the subject of a temporary custody order that does not contain the requisite nonviability-of-reunification determination under section 101(a)(27)(J)(i) of the Act.

#### IV. CONCLUSION

The Petitioner did not establish that she was the subject of a qualifying juvenile court custody order. Consequently, the Petitioner does not meet subsection 101(a)(27)(J)(i) of the Act and the petition will remain denied.

In these proceedings, the Petitioner bears the burden of proof to establish her 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, that burden has not been met. Accordingly, the motion to reconsider will be denied.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of J-M-J-F-*, ID# 15113 (AAO Jan. 4, 2016)