



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

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

MATTER OF V-A-S-G-

DATE: JAN. 15, 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, Albuquerque, New Mexico, initially approved the petition. The Director issued a notice of intent to revoke (NOIR) the approval of the petition and subsequently revoked the petition's approval. We dismissed an appeal of the revocation. The matter is now before us on a motion to reopen and 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. 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;

(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

Matter of V-A-S-G-

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]. The Petitioner claims to have entered the United States on or about May 31, 2012, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol agents near [REDACTED] Texas, taken into custody of the Office of Refugee Resettlement (ORR), and released from ORR custody to his mother, [REDACTED] on August 13, 2012. On [REDACTED], 2013, the Ninth Judicial District Court, [REDACTED] New Mexico, granted an Order for Kinship Guardianship over the Petitioner to [REDACTED] (juvenile court order). See *Order for Kinship Guardianship*, Ninth Jud. Dist. Ct., [REDACTED] 2013).

The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on January 25, 2013. The Director initially approved the Form I-360 but then revoked approval, finding that the Petitioner had not overcome the deficiencies stated in the NOID; that the record did not provide a reasonable factual basis for the juvenile court's guardianship order and that the Petitioner sought the juvenile court order primarily for immigration purposes; and therefore did not meet the definition of a "Special Immigrant Juvenile."¹ The Petitioner timely appealed and in our June 25, 2015, decision, incorporated here by reference, we found that the court order did not address whether it would be in the Petitioner's best interest to return to El Salvador and dismissed the appeal. The Petitioner submitted a timely motion to reopen and reconsider. On motion, the Petitioner submits a brief, the juvenile court order, New Mexico laws relevant to guardianship proceedings, a U.S. Citizenship and Immigration Services (USCIS) memorandum,² and documents regarding violence in El Salvador.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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

¹ We determined on appeal that the Director erred in issuing a NOIR, rather than a service motion pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii), but found that the Petitioner had sufficient notice and the opportunity to supplement the record prior to the Director's final decision withdrawing the approval of the Form I-360 and had a second opportunity to demonstrate eligibility on appeal.

² Memorandum from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs., et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, p. 3 (Mar. 24, 2009).

incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The Petitioner does not state new facts to be provided, or cite precedent decisions to establish that our prior decision was based on an incorrect application of law or USCIS policy. The Petitioner also does not establish that our prior decision was incorrect based on the evidence of record at the time. Consequently, the motion to reopen and reconsider will be denied. *See* 8 C.F.R. § 103.5(a)(4).

III. ANALYSIS

We review these proceedings *de novo*. The Petitioner's brief and supplemental materials on motion do not overcome the Director's ground for denial. The motion will be denied for the following reasons.

In our prior decision, we determined that the juvenile court order was deficient because it did not provide a reasonable factual basis for the juvenile court's finding that the Petitioner was abandoned, and did not contain the requisite finding that it was not in his best interests to return to El Salvador.

When adjudicating a Form I-360, 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)-(ii) of the Act. USCIS then reviews the relevant evidence to ensure that the record contains a reasonable factual basis for the juvenile court order, which demonstrate that the juvenile court order was sought primarily to obtain relief from abuse, neglect or abandonment.³ USCIS is not the fact finder in regards to issues of child welfare under state law. Rather, the Act 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). Juvenile court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for our consent. 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 our consent to the requested classification.

On motion, the Petitioner submits evidence indicating that the crime rate in El Salvador is one of the highest in the world, and that young males are particularly susceptible to gang violence. He asserts that the juvenile court would not have entered the juvenile court order without finding that it was not in his best interest to return to El Salvador and that the facts regarding the dangers to children of living in El Salvador are "simply self evident" and "are not required to be spelled out [by the juvenile court] in writing." He further contends on motion that the juvenile court order is supported by New Mexico law, which incorporates a "best interest of the child" analysis into the decision by the juvenile court to grant a kinship guardianship, thus satisfying the requirement that a reasonable factual basis exists for the

³ *See* USCIS Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions, 4-5 (May 25, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

juvenile court's order, and that the juvenile court would not have entered the guardianship order without a sufficient factual finding that the Petitioner was abandoned by his parents.⁴ Finally, the Petitioner contends that the Act does not require that the juvenile court provide a reasonable factual basis for the guardianship, and that we have no authority to impose restrictions that are not contained in the Act.

As we noted in our previous decision, pursuant to section 101(a)(27)(J)(iii) of the Act, USCIS must consent to the grant of special immigrant juvenile status. As a predicate to such consent, a request for special immigrant juvenile status must be *bona fide* and confirm that a petitioner is not seeking our protection primarily to gain an immigration benefit. See USCIS Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions, 4-5 (May 25, 2004). Juvenile court orders lacking specific factual findings are insufficient to warrant the USCIS consent, and must be supplemented by other relevant evidence demonstrating the factual basis for the juvenile court's order.⁵ Here, the juvenile court order states only that the Petitioner has been abandoned. The record contains no other, relevant supporting evidence, such as the original application for guardianship, the transcript of any hearing held on the application, or any other evidence the juvenile court considered in its determination that the Petitioner was abandoned by his parents.⁶

In addition, the juvenile court order does not address whether or not it would be in the Petitioner's best interest to return to El Salvador, as required by section 101(a)(27)(J)(ii) of the Act, and there is not a reasonable factual basis for such a ruling. Although the evidence submitted by the Petitioner on motion indicates the dangers of living in El Salvador, it is not sufficient to demonstrate that the juvenile court relied on this or other evidence in making a determination whether or not it is in the Petitioner's best interest to be returned to his country of nationality or country of last habitual residence pursuant to section 101(a)(27)(J)(ii) of the Act. Contrary to the Petitioner's assertion on motion, the juvenile court order must be based on specific facts regarding whether or not it is in the Petitioner's best interest to be returned to El Salvador and neither we nor the juvenile court may rely upon facts, without citation to such facts, which the Petitioner claims are "self evident." 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, and the juvenile court order does not include a determination that it is not in the Petitioner's best interest to return to El Salvador, as required by section 101(a)(27)(J)(ii) of the Act.

IV. CONCLUSION

The motion will be denied 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

⁴ The Petitioner also asserts that requiring a factual basis beyond the juvenile court order is a violation of his due process rights, but does not present any legal argument or analysis to support this contention.

⁵ *Id.* at 5; See also Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981, 54985 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11).

⁶ While the Petitioner stated in his brief on appeal that his parents could not care for him, we do not know from the record what facts were considered by the juvenile court in the kinship guardianship proceedings.

Matter of V-A-S-G-

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 reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of V-A-S-G-*, ID# 15218 (AAO Jan. 15, 2016)