



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

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

MATTER OF E-F-I-M-

DATE: JAN. 28, 2016

APPEAL OF CHARLOTTE, NORTH 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, Charlotte, North 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 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

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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 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to consent to the grant of special immigrant juvenile (SIJ) status. This consent determination “is an acknowledgement that the request for SIJ classification is bona fide,” meaning that neither the custody order nor the best interest determination was “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.” See Memorandum from William R. Yates, Assoc. Dir. for Operations, USCIS, HQ ADN 70/23, *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, at 2 (May 27, 2004) (USCIS *Memorandum #3*) (quoting H.R. Rep. No. 105-405 at 130 (1997)).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Honduras on [REDACTED]. He entered the United States on or about March 26, 2011, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol Agents after his entry near [REDACTED] Texas, was taken into the custody of the Office of Refugee Resettlement (ORR), and was issued a Notice to Appear in removal proceedings.

On [REDACTED] 2013, the General Court of Justice, District Court Division, for [REDACTED], North Carolina (juvenile court), issued a Decree of Adoption, granting adoption of the Petitioner to [REDACTED]. See *Decree of Adoption*, Gen. Ct. Just., Dist. Ct. Div., [REDACTED] (adoption decree). The Petitioner first filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on November 1, 2013. The Director denied that Form I-360 in a decision dated April 9, 2014. The Petitioner filed a second Form I-360 on December 18, 2014. The Director issued a notice of intent to deny (NOID), indicating that the adoption decree does not “contain the requisite language stating that the Petitioner was abused, abandoned or neglected,” state that reunification with one or both parents is not viable, and state that it is not in the Petitioner’s best interest to return to Honduras, as required by section 101(a)(27)(J)(i)-(ii) of the Act. The Director also determined that the record lacked sufficient evidence providing a reasonable factual basis for the adoption decree. The Petitioner replied to the NOID with a brief and additional evidence. The Director found the evidence insufficient to establish that consent to grant SIJ classification was warranted. The Director indicated that the adoption decree did not contain specific factual findings in support of the statements that the Petitioner was abused, neglected, or abandoned by his parents, that reunification with one or both parents was not viable, and that it was not in the Petitioner’s best interest to return to Honduras. Therefore, the Director found that the evidence did not establish that

consent to grant SIJ classification was warranted, and denied the Form I-360. The Petitioner filed a timely appeal.

III. ANALYSIS

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

The Director denied the Form I-360 based on a finding that the evidence did not establish that consent to grant SIJ classification was warranted. On appeal, the Petitioner contends that the adoption decree contained the requisite language to establish his eligibility for SIJ classification. Specifically, the Petitioner asserts that the adoption decree, which states, "[e]fforts at reunification of the minor child with either former parent cannot be made, and if attempted, will be unavailing and contrary to the minor child's health, safety, well-being, and interest due to abuse, neglect or abandonment," meets the requirements at subsections 101(a)(27)(J)(i) and (ii) of the Act. He further contends that, because the adoption decree severed his relationship with his biological parents, this confirms that reunification with one or both parents is not viable due to abuse, neglect, or abandonment. The Petitioner states that the Director erred in requesting additional evidence to support the findings of the juvenile court that the Petitioner was abused, neglected, or abandoned. The Petitioner further asserts that the Petition for Adoption of a Minor Child, which states that the Petitioner "was abandoned by his biological parents," contains a specific factual finding which provides a reasonable factual basis for the adoption decree.

When adjudicating an SIJ petition, 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 juvenile court's order. *See* USCIS *Memorandum* #3 at 4-5 (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings). 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 the agency's consent and must be supplemented by other relevant evidence demonstrating the factual basis for the court's order. *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).

In this case, the record of proceedings does not provide a reasonable factual basis for the order of the juvenile court. The adoption decree states that the Petitioner could not be reunified with either of his parents and that reunification would not be in his best interest due to abuse, neglect, or

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abandonment. The Petitioner asserts that the statement regarding abuse, neglect, or abandonment is not a standard paragraph required in all North Carolina adoption decrees, and the fact that it was added in his adoption decree indicates that it was a specific finding made by the juvenile court in his case. However, the adoption decree does not contain specific factual findings underlying that determination. Furthermore, although the Petitioner submitted a Petition for Adoption of a Minor Child, dated August 6, 2012, which states that the Petitioner was “abandoned by his biological parents”, this statement provides no description of the circumstances surrounding the Petitioner’s abandonment.

Additionally, the adoption decree does not address whether it would be in the Petitioner’s best interest to return to Honduras or remain in the United States, and the record of proceedings does not contain additional supporting evidence on this issue. The Petitioner asserts that, in granting the adoption of the Petitioner, the juvenile court considered the Petitioner’s best interest. He notes that a best interest determination is required under North Carolina law, and he submits an Order That Adoption Is in the Child’s Best Interest, dated [REDACTED], 2013, which states that [REDACTED] resolved all reservations relating to the adoption of the Petitioner. However, the adoption decree does not specifically state that it would not be in the Petitioner’s best interest to return to Honduras, nor does the record of proceedings contain additional evidence to provide a reasonable factual basis for such a finding.

The Petitioner also asserts that adoption records in North Carolina are sealed and confidential, and that he cannot obtain additional evidence relating to his adoption proceedings. Although we acknowledge that adoption records may be sealed, the Petitioner did not provide sufficient evidence to demonstrate a factual basis for the juvenile court’s determinations. The record of proceedings does not demonstrate how the juvenile court came to its nonviability-of-reunification and best interest determinations. Neither the Petition for Adoption of a Minor Child or the Order That Adoption Is In the Child’s Best Interest contains specific facts supporting their findings, and the record of proceedings does not contain, for example, any separate findings of fact accompanying the adoption decree, the Petition for Adoption of a Minor Child, or the Order That Adoption Is In the Child’s Best Interest, or an affidavit from the juvenile court or the Petitioner’s adoptive mother summarizing the evidence that was presented to support the juvenile court’s orders. *See USCIS Memo #3* at 5 (describing the types of evidence that USCIS may request and consider when making a consent determination). Due to these deficiencies, the Petitioner has not established that the request for SIJ classification is *bona fide*, and consent to SIJ classification is not warranted in this case.

IV. CONCLUSION

The Petitioner did not establish a reasonable factual basis for the findings of the juvenile court. Consequently, the Petitioner does not meet the requirement at section 101(a)(27)(J)(iii) of the Act and the Form I-360 will remain denied.

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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-F-I-M-*, ID# 15550 (AAO Jan. 28, 2016)