



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

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

MATTER OF P-A-Z-O-

DATE: JULY 20, 2016

APPEAL OF OMAHA, NEBRASKA 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) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign children in the United States who have been abused, neglected, or abandoned, and found dependent on a juvenile court in the United States.

The Field Office Director, Omaha, Nebraska, denied the petition. The Director concluded that the Petitioner failed to submit the required documentary evidence to establish his age, and had therefore not established his eligibility for SIJ status.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that as he has now submitted his birth certificate, his SIJ petition should be granted.

Upon *de novo* review, we will dismiss the appeal.

**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;

(b)(6)

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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[.]

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010).

## II. ANALYSIS

Although in response to our request for evidence (RFE) the Petitioner submitted the requisite copy of his birth certificate, the guardianship order is insufficient because the court did not assert its jurisdiction over the Petitioner as a juvenile, as required by section 101(a)(27)(J)(i) of the Act.

As the facts were discussed in the RFE, we will not repeat them here except as necessary. On appeal, the Petitioner submits a copy of his birth certificate that shows that he was born on [REDACTED] not [REDACTED] as he previously believed. As such, the order issued by the Juvenile Court of the State of Nebraska, [REDACTED] on [REDACTED] 2012, is deficient because the Petitioner was [REDACTED] years old on that date, not [REDACTED] years old as the Court believed, and therefore the Court did not have jurisdiction over the Petitioner as a juvenile.

On appeal, the Petitioner contends that he was still a minor at the inception of his case before the juvenile court because pursuant to Neb. Rev. Stat. section 43-2101, “[a]ll persons under nineteen years of age are declared to be minors.” However, the term “juvenile court,” as used in subsection 101(a)(27)(J)(i) of the Act, is defined as a court “having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a). In its court order, the juvenile court indicated that it had jurisdiction of the Petitioner as a child under Neb. Rev. Stat. section 43-247(3A) and not section 43-2101. Neb. Rev. Stat. section 43-247(3A) provides jurisdiction over juveniles as defined in section 43-245(10) as “any person under the age of eighteen.” Since the Petitioner was not under the age of [REDACTED] at the time the Adjudication of Jurisdiction and the subsequent guardianship orders were issued, the juvenile court did not have

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jurisdiction over the Petitioner as a minor under Nebraska state law. Consequently, the Petitioner has not demonstrated that his request for SIJ classification contains a valid custody or dependency order issued by a juvenile court, as required by section 101(a)(27)(J)(i) of the Act.

### III. CONCLUSION

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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of P-A-Z-O-*, ID# 12756 (AAO July 20, 2016)