



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

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

MATTER OF V-S-

DATE: JULY 25, 2016

APPEAL OF LONG ISLAND, 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) 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 District Director, New York, New York, denied the petition. The Director concluded that the juvenile court order was deficient because it relied on inconsistent information and lacked a reasonable factual basis for its determinations that reunification with one or both parents was not viable due to abuse, neglect, abandonment, or a similar basis found under State law. Accordingly, the Director concluded that United States Citizenship and Immigration Services' (USCIS) consent was not warranted in this case.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the certified juvenile court order establishes the requisite eligibility criteria and that the Director improperly withheld her consent.

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

#### I. APPLICABLE LAW

Section 204(a)(1)(G) of the Act allows an individual to self-petition for classification as an SIJ. Section 101(a)(27)(J) of the Act defines an SIJ 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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(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[.]

Subsection 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 classification. 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 abuse, neglect, abandonment, or a similar basis under state law, and not solely or primarily to obtain an immigration benefit.<sup>1</sup>

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

## II. ANALYSIS

The record reflects that the Petitioner was born in India on [REDACTED]. He entered the United States on a B-2 tourist visa on January 19, 2011, at the age of [REDACTED]. On [REDACTED] 2015, the Family Court of the State of New York, [REDACTED] New York (juvenile court), granted guardianship of the Petitioner to G-S-,<sup>2</sup> his uncle, and R-K-, his aunt (Order Appointing Guardian), and entered an order regarding the Petitioner's SIJ status (SIJ Status Order). The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), on [REDACTED] his 21st birthday.

<sup>1</sup> H.R. Rep. No. 105-405 at 130 (1997); *see also* Memorandum from Donald Neufeld, Acting Associate Director for Domestic Operations, USCIS, HQ 70/8.5, *Trafficking Victims Protection Reauthorization Act of 2008; Special Immigrant Juvenile Status Provisions* 3 (Mar. 24, 2009), <https://www.uscis.gov/laws/policy-memoranda>.

<sup>2</sup> We provide the initials of individual names throughout this decision to protect identities.

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#### A. USCIS' Consent is Not Warranted

When adjudicating an SIJ petition, USCIS examines the juvenile court order to determine if it contains the requisite findings of dependency or custody, non-viability of reunification with one or both parents, and the best interests determination, as required by sections 101(a)(27)(J)(i) and (ii) of the Act. USCIS requires the factual basis for the court's findings so it may fulfill its required consent function.<sup>3</sup> Juvenile court orders that include or are supplemented by specific findings of fact as to its SIJ findings will generally be sufficient to establish eligibility for consent. Although a juvenile court's findings need not be overly detailed, they must reflect that the juvenile court made an informed decision.<sup>4</sup>

The juvenile court stated in its SIJ Status Order, that "[t]he subject child's parent have fully abdicated all parental responsibility with regard to the subject child and failed to provide for his care and welfare since in or about 2011." On appeal, the Petitioner submits the transcript of the juvenile court proceedings, Family Court of the State of New York, [REDACTED] New York, [REDACTED]. [REDACTED] *G-S- et ux vs. K-S- et ux* (transcript). The transcript reflects that the court found the Petitioner's testimony that he was abandoned by both his mother and father to be credible, and his claim that his mother was abusive was not credible. Transcript at 101. As such, there is a factual basis for the court's finding of abandonment by both parents. The Director's finding to the contrary is withdrawn.

The record does not, however provide a factual basis for the juvenile court's order that it was not in the Petitioner's best interest to return to India. The Court stated the following in making the best interest determination:

I do find that it's -- one more -- this is not in the child's best interest to be removed from the United States and be returned to India, his country of nationality or last habitual residence. I'm gonna print this. Okay. [To Petitioner], I need you to listen to me very carefully, okay? This special findings order is a window of opportunity for you. These -- you may have heard that these things are so easy to get, they're -- whatever they are. What they are is an opportunity for you that without them you probably would not have. You probably would have to go back to India. So this will afford you an opportunity to get that education, to follow your dreams and become something in life.

The best interest determination is a deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of a petitioner to be returned to a placement in the country of nationality or last habitual residence of the petitioner or his or her parents. A finding that a particular custodial placement is the best alternative available to a petitioner in the United States does not necessarily establish that a placement in a petitioner's

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<sup>3</sup> A "factual basis" means the facts upon which the juvenile court relied in making its rulings or findings.

<sup>4</sup> See Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQADN 70/23, *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 juvenile court's rulings), <https://www.uscis.gov/laws/policy-memoranda>.

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country of nationality would not be in the petitioner's best interest.<sup>5</sup>

The juvenile court's best interest determination is based on the juvenile court's assessment that the Petitioner has an "opportunity to get that education, to follow your dreams and become something in life..." The juvenile court order does not state the basis for this assessment such to warrant the agency's consent to the Petitioner's request for SIJ classification. There is no evidence in the record of proceedings regarding what information was taken into account by the juvenile court in making its best interest determination. As such, the evidence in the record of proceedings does not contain the factual basis for the juvenile court's best interest determination sufficient to warrant consent by USCIS under subsection 101(a)(27)(J)(iii) of the Act to a grant of SIJ classification.

#### B. Age Out Determination

We further conclude upon *de novo* review that the Petitioner does not meet the eligibility criteria for SIJ classification because he was not a child on the date the SIJ petition was filed, as required by the regulation at 8 C.F.R. § 204.11(c)(1) - (2). A child is defined as an unmarried person under the age of 21. Section 101(b)(1) of the Act. Here, the Petitioner filed the SIJ petition on [REDACTED] and was not under the age of 21 on that date. For this additional reason, the appeal must be dismissed.

### III. CONCLUSION

The Petitioner has not shown that his request for SIJ classification merits the agency's consent, and that he was a child at the time he filed the SIJ petition. Consequently, the Petitioner does not meet the requirements of section 101(a)(27)(J) of the Act.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of V-S-*, ID# 17577 (AAO July 25, 2016)

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<sup>5</sup> See *Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status*, 58 Fed. Reg. 42843, 42848 (Aug. 13, 1993).