



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

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

MATTER OF E-G-C-V-

DATE: JUNE 2, 2016

APPEAL OF DENVER, COLORADO 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, Denver, Colorado, denied the petition. The Director concluded that the Petitioner had not established the juvenile court's authority under relevant state law to exercise jurisdiction over the Petitioner as a minor after his 18th birthday. The Director further held that the Petitioner had not established that his request for SIJ classification was *bona fide* and merited consent by U.S. Citizenship and Immigration Services (USCIS).

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the juvenile court had authority under state law to exercise jurisdiction over the Petitioner as a minor to make findings for SIJ classification purposes, even after he attained 18 years of age. He further asserts that the Director erred in denying USCIS consent to the Petitioner's *bona fide* request for SIJ classification.

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

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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 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.¹

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, 376 (AAO 2010).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Mexico on [REDACTED]. The Petitioner entered the United States without inspection, admission, or parole on an unknown date when he was approximately [REDACTED] years old. The Petitioner became the subject of juvenile court delinquency proceedings before the [REDACTED] Colorado (juvenile court) on [REDACTED] 2010. On [REDACTED] 2013, when the Petitioner was [REDACTED] years old, the court issued an order which, among other determinations, made findings relevant to the Petitioner's eligibility for SIJ classification purposes. On [REDACTED] 2013, the juvenile court issued a second amended order.

¹ H.R. Rep. No. 105-405 at 130 (1997); *see also* Memorandum from Donald Neufeld, Acting Associate Director for Domestic Operations, USCIS, HQOPS 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>.

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III. ANALYSIS

Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the grounds for denial.

When adjudicating an SIJ Form I-360, 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 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). However, USCIS requires the factual basis for the court's findings so it may fulfill its required consent function.² 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.³

Here, rather than inquiring into whether there was a reasonable factual basis for the requisite juvenile court determinations, the Director went behind the juvenile court's findings and found that the Petitioner's request for SIJ classification was not *bona fide* based on a subjective belief that the Petitioner's failure to pursue a juvenile court order for SIJ classification purposes during his prior juvenile delinquency proceedings in 2010 and 2011 demonstrated that his primary intention in seeking the juvenile court order was to obtain immigrant status. Such a conclusion has no support in the record. Thus, we withdraw that portion of the Director's decision.

Notwithstanding our finding, the Form I-360 is not approvable because the present record does not establish a reasonable factual basis for the juvenile court's non-viability of parental reunification determination. Although the juvenile court's [REDACTED] 2013 court order contains the requisite non-viability determination that parental reunification was not viable due to abandonment by the Petitioner's mother when he was three years old, apart from the general finding that the Petitioner's mother abandoned him, the court did not make any factual findings or identify the evidence or information upon which it based its amended non-viability determination.⁴ As such, USCIS consent to a grant of SIJ classification is not warranted.

² A "factual basis" means the facts upon which the juvenile court relied in making its rulings or findings. 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 27, 2004), <http://www.uscis.gov/laws/policy-memoranda>.

³ See Yates Memorandum, *supra*, at 4-5.

⁴ A petitioner need only establish the non-viability of reunification with one parent; here the order in relation to the Petitioner's mother was sufficient to establish this requirement. However, although the record contains the Petitioner's father's death certificate, both orders are deficient in relation to the Petitioner's father because the court did not specify whether the death of a parent constituted "abuse, neglect, abandonment, or a similar basis" under Colorado state law, as required by the Act.

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Our determination that USCIS consent is not warranted is also supported by conflicting evidence in the record as to whether the Petitioner's mother actually abandoned him. As noted by the Director, the juvenile court criminal docket report relating to the Petitioner's [REDACTED] 2011 burglary arrest specifically indicates that his mother appeared before the court on [REDACTED] 2013. Although the record contains a letter from the Petitioner's aunt asserting that this was an "error" and that it was she who "signed" to get the Petitioner out of jail, the docket report specifically distinguished between the Petitioner's mother and aunt, noting their separate appearances before the court on different dates in [REDACTED] 2013. Also, although the Petitioner's aunt stated that she signed the Petitioner out of jail, the inconsistency in the court docket entry relates to the Petitioner's mother's appearance before the court, not release from jail. Additionally, the Petitioner's claim that his mother abandoned him is further called into doubt as a search of public documents indicates that between October 19, 2010, and October 22, 2012, an individual bearing the Petitioner's mother's name resided at the address listed as the Petitioner's address in his [REDACTED] 2011 juvenile court records. In determining whether USCIS consent is warranted, we may consider a petitioner's relationship with his family and any evidence of the role of a parent in arranging for a petitioner to seek SIJ classification. *Yeboah v. INS*, 345 F.3d 216, 224-25 (3d Cir. 2003).

On appeal, the Petitioner asserts that the record contains sufficient evidence demonstrating his mother's abandonment, including: a letter from [REDACTED] the Petitioner's counsel in his delinquency proceedings; a letter from his aunt indicating that she had custody over the Petitioner since his father's death and deportation; and medical and school records. [REDACTED] letter indicated that the amended juvenile court order was obtained based on his oral motion after counsel learned that the Petitioner's mother had abandoned him. He explained that the Petitioner's aunt advised him that the Petitioner had been told that his mother had died in order to protect the Petitioner from the truth of her abandonment. However, the Petitioner himself has not provided a written statement in support of this assertion. In addition, the record does not show that the juvenile court was ever presented with or considered the evidence provided in these proceedings to demonstrate the Petitioner's mother abandonment of him. The record is therefore insufficient in establishing that the juvenile court made an informed decision in rendering the requisite non-visibility determination based on abandonment by the Petitioner's mother.

Accordingly, the record does not provide a reasonable factual basis for the juvenile court's non-visibility determination, and consequently, the Petitioner's request for SIJ classification does not warrant USCIS' consent, as required by section 101(a)(27)(J)(iii) of the Act.⁵ Given our finding, we do not reach the issue of whether the record establishes the validity of the juvenile court order where it was issued after the Petitioner attained 18 years of age and was no longer a minor under state law.

⁵ The Petitioner also asserts that the Director violated the TVPRA mandate requiring that a petition under section 101(a)(27)(J) of the Act be adjudicated within 180 days. However, the administrative records show that the Director issued a request for evidence well within 180 days of filing, as well as a subsequent notice of intent to deny, to allow the Petitioner an opportunity to furnish additional evidence to establish his eligibility for the requested benefit because the Petitioner's evidence was insufficient.

IV. 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 E-G-C-V-*, ID# 16580 (AAO June 2, 2016)