



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

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

MATTER OF F-J-G-S-

DATE: JUNE 2, 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 (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, Charlotte, North Carolina, denied the petition. The Director concluded that: (1) the juvenile court order was not valid because the Petitioner was already over 18 years of age when it was issued and the record did not establish the court's authority to exercise jurisdiction over the Petitioner as a child; (2) the custody order was not a final order; and (3) the record did not establish a reasonable factual basis for the juvenile court's determination that parental reunification is not viable due to abandonment.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that he is the subject of a valid juvenile court order and that neither the Act nor the implementing regulations require that the requisite findings by juvenile court order be permanent. He also maintains that the record demonstrates a reasonable factual basis for the juvenile court's non-viability determination.

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

(b)(6)

Matter of F-J-G-S-

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 U.S. Citizenship and Immigration Services (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 primarily to obtain immigrant status.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] and entered the United States without inspection, admission, or parole in approximately 2004. On [REDACTED] 2013, when the Petitioner was [REDACTED] years old, the [REDACTED] in [REDACTED] North Carolina (juvenile court) issued an *Order Granting Ex Parte Emergency Custody*, awarding temporary care, custody, and control of the Petitioner to her stepfather. On [REDACTED] 2013, the juvenile court closed the custody proceedings, concluding as a matter of law that it had no jurisdiction because the Petitioner was no longer a child.

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>.

III. ANALYSIS

A full review of the record, as supplemented on appeal, does not establish the Petitioner's eligibility. The appeal will be dismissed for the following reasons.

A. The Petitioner is not the Subject of a Valid Juvenile Court Order

The Director properly found the [REDACTED] 2013 juvenile court custody order to be deficient, as the record did not establish that custody of the Petitioner was awarded in accordance with state law. The court order indicates that the custody proceedings were brought under the Uniform Child-Custody Jurisdiction and Enforcement Act set forth at Chapter 50A, Article 2 of the North Carolina General Statutes. Section 50A-102(2) of the North Carolina General Statutes defines "child" as an individual who has not attained 18 years of age. Here, the Petitioner was already [REDACTED] years old when the juvenile court issued the custody order and she did not meet the definition of child under state law. Although the order references the Petitioner as a child and a minor, it did not identify the statutory or legal authority under North Carolina state law on which it relied in assuming jurisdiction over the Petitioner as a minor after she had already turned [REDACTED] years of age.

On appeal, the Petitioner contends that the juvenile court exercised jurisdiction over the Petitioner as a minor under section 50-13.8 of the North Carolina General Statutes. That provision falls under Chapter 50 relating to divorce and alimony proceedings and provides that the rights of a person who is mentally or physically incapable of self-support upon reaching majority to be the same as a minor child's for purposes of custody issues. However, the juvenile court did not specifically cite this provision in assuming jurisdiction over the Petitioner after her [REDACTED] birthday, even if it had been applicable to the Petitioner's custody proceedings. The record also does not include the underlying petition or other court documents establishing the legal basis for the court's exercise of jurisdiction. Moreover, the court's jurisdiction under state law to issue the custody order is further called into question given that the court later ordered the proceedings closed in [REDACTED] 2013, explicitly on the basis that it did not have jurisdiction because the Petitioner was no longer a minor.

The Petitioner also refers to the settlement agreement in *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. 2005) and asserts that the Director was barred from denying a Form I-360 where a petitioner was under 21 years of age when he or she filed a Form I-360 *or* was the subject of a valid dependency order that was later terminated due to age. In her case, the Petitioner contends that her Form I-360 should never have been denied because she met both those prongs. The Petitioner misinterprets the *Perez-Olano* settlement agreement. The stipulation enforcing the settlement agreement clarifies that USCIS will not deny, revoke, or terminate a Form I-360 or an SIJ-based Form I-485 if, *at the time of filing the Form I-360*: (1) the petitioner is or was under 21 years of age, unmarried, and otherwise eligible; *and* (2) the petitioner either is the subject of a valid dependency order *or* was the subject of a valid dependency order that was terminated based on age prior to filing.² Contrary to the Petitioner's assertion, the record does not establish that she was ever the

² See also USCIS Policy Memorandum PM-602-0117, *Updated Implementation of the Special Immigrant Juvenile*

(b)(6)

Matter of F-J-G-S-

subject of a valid juvenile court order, even at the time her Form I-360 filing, because she has not demonstrated the juvenile court's authority to exercise jurisdiction and make a custody determination in her case after she had already attained 18 years of age and was no longer a child under state law.

The Petitioner also relies on the age-out protections of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) under which USCIS may not deny a Form I-360 based on the fact that a SIJ petitioner has reached the age of 21 and was no longer a "child" under section 101(b)(1) of the Act, 8 U.S.C. § 101(b)(1), so long as the petitioner was under 21 years of age at the time the Form I-360 was filed. The Petitioner is correct that she was under 21 years of age at the time of filing and thus, may not have her Form I-360 denied on the basis that she is no longer under age 21. However, this was not the basis on which her Form I-360 was denied. As discussed, the Petitioner did not demonstrate that she was the subject of a valid juvenile court order at the time she filed her Form I-360, because she was over [REDACTED] years of age and was not a "child" under North Carolina law when the juvenile court issued the custody order. Although the federal definition of "child" under section 101(b)(1) applies to SIJ proceedings, it does so only in the context of establishing eligibility to file for SIJ classification before USCIS up until the age of 21. In determining whether a petitioner is the subject of a valid juvenile custody or dependency court order as required by section 101(a)(27)(J)(i) of the Act, the juvenile court must determine whether an individual is a juvenile under its state's laws. *See* 8 C.F.R. § 204.11(c)(3); *see also* 8 C.F.R. § 204.11(a) (defining a "juvenile court" as U.S. court that makes determinations about the care and custody of juveniles).

As the Petitioner has not demonstrated that the juvenile court dependency order was issued in accordance with state law, she has not established the validity of the order.

B. The Juvenile Court Order is not a Final Order

The Director determined that the [REDACTED] 2013 juvenile court order was also deficient because it was not a final order. On appeal, the Petitioner asserts that neither section 101(a)(27)(J) nor the corresponding implementing regulations require that the juvenile court order be issued on a permanent basis. However, the Act requires an SIJ petitioner to demonstrate that reunification with one or both of his or her parents is not viable. Section 101(a)(27)(J)(i) of the Act. The juvenile court order here was an ex-parte emergency order that expressly awarded temporary care, custody, and control of the Petitioner to her stepfather. The record does not show that the juvenile court subsequently issued a final custody order. Such a temporary non-viability determination cannot establish that "family reunification is no longer a viable option," where the Petitioner has not shown that the court ultimately granted a final custody order to her stepfather. *See* section 235(d)(5) of the TVPRA 2008, Pub. L. 110-457 (providing that a court-appointed custodian who is acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility).

Perez-Olano Settlement Agreement 3 (June 25, 2015), <https://www.uscis.gov/laws/policy-memoranda> (emphasis added).

As the juvenile court order is not final, the Petitioner has not satisfied the requirements of section 101(a)(27)(J) of the Act and is ineligible for SIJ classification.

C. USCIS' Consent is Not Warranted

1. Requisite Finding of Non-Viability of Reunification

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. The juvenile court order here, although deficient due to lack of jurisdiction and its non-finality, otherwise includes the requisite determination that the Petitioner's reunification with her biological parents was not viable due to their abandonment of her.

2. Reasonable Factual Basis Underlying Finding of Non-Viability of Parental Reunification

USCIS requires the factual basis for the juvenile court's findings of non-viability of parental reunification so it may fulfill its required consent function.³ 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.⁴ The Director found that USCIS' consent to a grant of SIJ classification was not warranted because the record did not establish a reasonable factual basis for the juvenile court's non-viability of parental reunification determination due to abandonment.

As it relates to the Petitioner's mother, the juvenile court order indicates only that she resides in the same county in which the court sits but makes no other specific findings to support the juvenile court's general determination of "abandonment by her parents." As the juvenile court did not make any factual findings to support the determination that the Petitioner's mother had abandoned her, the Director properly found that there was no reasonable factual basis for the non-viability determination relating to the Petitioner's mother. However, the Act requires only that the "reunification with 1 or both" of the Petitioner's parents is not viable. Section 101(a)(27)(J)(i) of the Act. Here, the court's non-viability determination relating to the Petitioner's father is supported by a reasonable factual basis. Specifically, the court order contains detailed findings of fact, including that: the Petitioner's father had abandoned the Petitioner at birth; his whereabouts were unknown although he was believed to reside in Mexico; and the Petitioner's stepfather had the care, custody, and control of the Petitioner as her primary caretaker since October 2012. Based on these findings, the court determined that the Petitioner's father had abandoned her and that reunification with her father was

³ 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>.

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

not viable. Accordingly, the record establishes a reasonable factual basis for the juvenile court's non-viability determination concerning the Petitioner's father and we withdraw the Director's determination on this issue.

3. Reasonable Factual Basis for the Best Interest Determination

However, under our *de novo* review, the Petitioner's Form I-360 is not approvable because the juvenile court order does not contain factual findings to indicate that the court made an informed decision in determining that it was not in the Petitioner's best interest to return to Mexico.⁵ Further, the record does not contain the underlying petition for the juvenile court order, other court records, or evidence on which the court relied in rendering its best interest determination. The record therefore does not establish a reasonable factual basis for the juvenile court's best interest determination. Accordingly, the consent of USCIS to a grant of SIJ classification, as required by section 101(a)(27)(J)(iii) of the Act, is not warranted.

IV. CONCLUSION

The appeal will be dismissed 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 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 F-J-G-S-*, ID# 16583 (AAO June 2, 2016)

⁵ We may deny an application or petition that does not comply with the technical requirements of the law even if the underlying decision does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).