



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

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

MATTER OF G-M-A-A-

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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The Director concluded that the juvenile court's temporary custody order did not make a permanent finding of nonviability of reunification with one or more of the Petitioner's parents, and that the Petitioner did not provide sufficient evidence to establish that the juvenile court had jurisdiction over her as a juvenile on the date that it issued the temporary custody order.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that she is eligible for SIJ classification because she is the subject of a custody order that is permanent in nature.

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

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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 (AAO 2010).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Guatemala on [REDACTED]. The Petitioner entered the United States without inspection, admission, or parole. She was apprehended by U.S. Customs and Border Patrol agents at the time of her entry near [REDACTED] Texas, and was issued a Notice to Appear in removal proceedings. On [REDACTED] 2015, the [REDACTED] North Carolina (juvenile court) granted an *ex parte* temporary custody order to the Petitioner's caregiver, S-A-P.² In the order, the juvenile court explained that the "terms of this Order shall remain in effect until further orders of this Court" and scheduled a

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>.

² We provide the initials of the individual's name throughout this decision to protect his identity.

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review hearing on [REDACTED] 2015. The Petitioner turned [REDACTED] years of age on [REDACTED] 2015. On that same day, the juvenile court issued a temporary order for child custody, indicating that S-A-P- should retain custody of the Petitioner but that the juvenile court “shall retain jurisdiction over the parties and subject matter stated herein.” The Petitioner filed this Form I-360 based on the juvenile court’s findings of fact.

III. ANALYSIS

The Director determined that the Petitioner did not demonstrate that she is or was the subject of a qualifying juvenile court dependency or custody order because the temporary custody order was a temporary finding that reunification with one or both of the Petitioner’s parents was not viable. Before the Director, the Petitioner submitted only the [REDACTED] 2015, order.

On appeal, the Petitioner initially asserts that the Director erroneously cited to the date of the custody order as [REDACTED] 2015. The Petitioner indicates that the correct date was [REDACTED] 2015, and provides a copy of an *ex parte* emergency custody order issued on that date; however, the Director did not have the opportunity to consider the [REDACTED] 2015, order because the Petitioner provided it for the first time on appeal.

Regarding the two orders, the Petitioner contends that section 101(a)(27)(J) of the Act and the regulation at 8 C.F.R. § 204.11(c) do not require that the juvenile court order be permanent. However, section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 provides that a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility.

More importantly, the North Carolina Court of Appeals has stated that “[w]hen a court invokes emergency jurisdiction, any orders entered shall be temporary protective orders only.” *In re Brode*, 566 S.E.2d 858, 860 (N.C. App. Ct. 2002) (citations omitted). The Petitioner obtained the *ex parte* emergency order through a proceeding that allows a juvenile court to take temporary jurisdiction over a child when necessary in an emergency to protect the child and defers custody determinations to a subsequent hearing. Accordingly, the *ex parte* emergency order was not a qualifying juvenile court order at the time it was issued because there was no finality to the proceedings.³

The Petitioner cites to *LaValley v. LaValley*, 151 N.C. App. 290 (2002), and contends that the [REDACTED] 2015, *ex parte* emergency custody order “was as permanent as it could be” in North Carolina. However, an order is temporary in North Carolina “if either (1) it states a clear and specific reconvening time in the order and the time interval between the two hearings was reasonably brief; or (2) the order does not determine all issues.” *See Lamond v. Mahoney*, 583 S.E.2d 656, 659 (N.C. App. 2003) (citing *Brewer v. Brewer*, 533 S.E.2d 541, 546 (N.C. App. 2000)). In *LaValley*, the

³ To the extent that the Petitioner argues that the agency has erroneously considered S-A-P- to be a temporary guardian under section 235(d)(5) of the TVPRA, we will not address this because the Petitioner otherwise has not provided a validly-issued, permanent custody order.

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North Carolina Court of Appeals (Court of Appeals) stated that “[a] temporary order is not designed to remain in effect for extensive periods of time or indefinitely . . . and must necessarily convert into a final order if a hearing is not set within a reasonable time.” *See LaValley v. LaValley*, 151 N.C. App. at 293, n.5. The Court of Appeals emphasized that “[w]e are careful to use the words ‘set for hearing’ rather than ‘heard’ because we are aware of the crowded court calendars in many of the counties of this State.” *Id.*

In the Petitioner’s case, when the juvenile court entered the *ex parte* emergency custody order, it also scheduled a subsequent hearing within the reasonable time of [REDACTED] 2015, which was less than two weeks later and the day the Petitioner turned [REDACTED] years old. In North Carolina, a juvenile and a minor are each defined as a person who has not reached his or her eighteenth birthday. *See* N.C. Gen. Stat. Ann §§ 7B-101(14), 48A-2 (West 2016). Even if the temporary custody order, dated [REDACTED] 2005, could be considered “as permanent as it could be,” it was not issued by a “juvenile court” as that term is defined by regulation because at that time the [REDACTED] in [REDACTED] North Carolina did not have jurisdiction to determine the Petitioner’s custody and care as a juvenile. *See* 8 C.F.R. § 204.11(a) (defining the term *juvenile court* as a “[U.S.] court having jurisdiction under State law to make judicial determinations about the custody and care of *juveniles*.”) (emphasis added).

The Petitioner has not established that either the [REDACTED] 2015, *ex parte* emergency custody order or the [REDACTED] 2015, temporary custody order is a qualifying juvenile court order under section 101(a)(27)(J)(i) of the Act, and the Form I-360 is not approvable for this reason.

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 G-M-A-A-*, ID# 16582 (AAO June 2, 2016)