



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

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

MATTER OF R-N-

DATE: JUNE 29, 2016

APPEAL OF NEW YORK, 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-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The District Director, New York, New York, denied the petition. The Director concluded that the Petitioner had not submitted sufficient evidence to warrant the consent of U.S. Citizenship and Immigration Services (USCIS) to the grant of SIJ classification to the Petitioner.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that the evidence submitted establishes that consent by USCIS is warranted.

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;

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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 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 solely or primarily to obtain an immigration benefit.¹

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. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner is a citizen of the Republic of Congo who was born on [REDACTED]. He entered the United States on July 9, 2013, as a nonimmigrant student on a passport issued by Burkina Faso. On [REDACTED] 2015, the Family Court of the State of New York, [REDACTED] (juvenile court) entered an order (juvenile court order), in which the juvenile court made specific findings as described at sections 101(a)(27)(J)(i)-(ii) of the Act relevant to whether the Petitioner qualifies for SIJ classification. The juvenile court also appointed R-D-² as guardian for the Petitioner in a separate order.

¹ 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>.

² Initials are used throughout this decision to protect the identities of the individuals.

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The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), based on the juvenile court order. The Director issued a notice of intent to deny (NOID), notifying the Petitioner that U. S. Citizenship and Immigration Services' (USCIS) consent to a grant of SIJ status was not warranted because the record did not establish that he sought the juvenile court order primarily for the purpose of obtaining relief from abuse, abandonment, or neglect, rather than for the purpose of obtaining an immigration benefit. According to the Director, although the Petitioner testified before the juvenile court that both of his parents died when he was [REDACTED] years old, information in the Petitioner's nonimmigrant visa application contradicts his testimony. The Petitioner timely responded to the NOID with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director then denied the Petitioner's request for SIJ classification, concluding that the record did not establish that USCIS' consent was warranted, and the Petitioner timely appealed.

III. ANALYSIS

A full review of the record, as supplemented on appeal, does not establish the Petitioner's eligibility. The Director correctly determined that USCIS' consent to a grant of SIJ classification is not warranted. In addition, we determine in our *de novo* review that the SIJ petition is also not approvable because the juvenile court order does not make the required non-viability of reunification determination.

A. USCIS' Consent is not Warranted

When adjudicating an SIJ petition, USCIS examines a 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 interest determination, as required by subsections 101(a)(27)(J)(i) and (ii) of the Act. USCIS requires the factual basis for a juvenile court's findings 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

In her denial decision, the Director determined that USCIS cannot consent to a grant of SIJ classification because the Petitioner did not establish that the SIJ petition was not submitted "strictly for immigration purposes." The Director noted that the juvenile court order indicated that the Petitioner's reunification with his parents is not viable because his parents died when he was approximately [REDACTED] years old; yet, his nonimmigrant visa application submitted to the U.S. consulate in Burkina Faso on May 23, 2013, reflects the current professions for each of his parents and that his

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

⁴ 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), <https://www.uscis.gov/laws/policy-memoranda>.

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father is paying for his trip to the United States as well as his tuition to [REDACTED] in [REDACTED] New York.

In the NOID, the Director indicated that the Petitioner could present additional evidence, which could include the juvenile court transcripts relating to the deaths of his parents and his parents' death certificates, to overcome the Director's concerns. In response to the NOID, the Petitioner submitted a portion of the juvenile court transcript, a personal statement, a petition and motion filed with the juvenile court, and information regarding country conditions in the Republic of Congo. As noted above, the Director denied the SIJ petition, finding that the juvenile court order was not sufficient to warrant consent by USCIS under subsection 101(a)(27)(J)(iii) of the Act to a grant of SIJ classification.

In the personal statement he submitted in response to the NOID, the Petitioner indicates that, shortly after his parents were killed, he left the Republic of Congo with his uncle and remained in Burkina Faso with his uncle until he travelled to the United States. He states that he told his uncle that he wanted to become a doctor so his uncle told him that he would apply for a student visa to the United States in order for the Petitioner to learn English and to study to become a doctor. According to the Petitioner, his uncle prepared the visa application and did not show it to the Petitioner but coached the Petitioner to tell U.S. consular officials that his father worked for an import-export business and his mother worked as a hotel manager. The Petitioner confirms in his personal statement that he repeated this lie to the U.S. consular officer conducting the visa interview and obtained a nonimmigrant visa to the United States. The Petitioner reports that, while he was going through the legal process to acquire SIJ classification, he "was scared that [he] would get in trouble for the fact that my student visa said that my parents were alive, that I tried to forget that it had ever happened and never told anyone about it." He also contends that he tried to reach his uncle after he arrived in the United States by attempting to reach him via telephone but he does not mention whether he made any other efforts to contact his uncle or anyone else in either Burkina Faso or the Republic of Congo.

As noted above, the Petitioner also submitted a portion of the transcript from a hearing on [REDACTED] 2015, before the juvenile court, in which he indicates that his parents died when he was [REDACTED] or [REDACTED] years old. He also testified that he contacted the [REDACTED] in an effort to obtain death certificates for them but he was informed that, because they died during a period of civil unrest, the government of the Republic of Congo would not have their death certificates in their files. In the transcript, he also confirms that his uncle helped him to obtain a visa to the United States but he does not indicate that he told a U.S. consular officer that his parents were alive and employed in order to obtain the visa. Finally, he contends that he has lost contact with his uncle and tried to reach him via telephone but does not explain if he tried any other means of locating his uncle or anyone else in Burkina Faso or the Republic of Congo. We note that the information provided by the Petitioner at the [REDACTED] 2015, juvenile court hearing generally corresponds to the information contained in a personal statement by the Petitioner that was submitted to the juvenile court with a motion for special findings relative to his request for SIJ classification.

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The juvenile court's non-viability of reunification and best interest determinations were based on the death of the Petitioner's parents. Although the juvenile court accepted the Petitioner's testimony as the sole evidence of his parents' deaths, given the derogatory information in the record of proceedings regarding the whereabouts of the Petitioners' parents of which the juvenile court was not made aware, the Petitioner must present primary or secondary evidence of his parents' deaths or demonstrate the unavailability of such evidence.

If primary evidence of his parents' deaths, such as their death certificates, does not exist or cannot be obtained, then the Petitioner "must demonstrate this and submit secondary evidence, such as church [or other] . . . records, pertinent to the facts at issue." 8 CFR § 103.2(b)(2)(i). If secondary evidence does not exist and cannot be obtained, then the Petitioner must demonstrate the unavailability of his parents' death certificates and secondary evidence, and submit two affidavits from persons with direct personal knowledge of their deaths and the circumstances by which they died. *Id.* In addition, in order to demonstrate that his parents' death certificates or secondary evidence of their deaths are not available, the Petitioner must submit a statement from the relevant governmental authority in the Republic of Congo indicating why the death certificates "do . . . not exist and whether similar records for the time and place are available." 8 CFR § 103.2(b)(2)(ii). If the Petitioner is unable to obtain a statement from the governmental authority in the Republic of Congo, he may submit evidence that he made repeated good faith attempts to obtain such a statement. *Id.*

Here, the Petitioner's testimony before the juvenile court that he contacted the [REDACTED] and was told that his parents' death certificates are not available does not comply with the regulation at 8 CFR § 103.2(b)(2). We note, as well, that the U.S. Department of State's Foreign Affairs Manual does not indicate that death certificates from the period when he claims that his parents died do not exist, and the website for the [REDACTED] of the Republic of Congo describes a process by which death certificates may be requested and does not mention the unavailability of death certificates during any specific period of time.⁵ In addition, the documents submitted by the Petitioner relating to country conditions in the Republic of Congo do not discuss whether death certificates are available for persons who died as a result of armed conflict during the period in which the Petitioner claims his parents died.

Accordingly, the Petitioner's personal statement and the documents submitted relating to country conditions in the Republic of Congo do not provide a reasonable, factual basis for the juvenile court's non-viability and best interest determinations sufficient to warrant consent by USCIS under subsection 101(a)(27)(J)(iii) of the Act to a grant of SIJ classification.

B. The Juvenile Court Order is Deficient

Subsection 101(a)(27)(J)(i) of the Act requires a petitioner to show the non-viability of reunification "due to abuse, neglect, abandonment, or a similar basis found under State law." Therefore, a juvenile court must make, in essence, two separate findings: first, that a petitioner has been

⁵ [REDACTED]

subjected to abuse, neglect, or abandonment, or a similar basis found under state law; and second, that “due to [such] abuse, neglect, abandonment, or a similar basis found under State law[,]” reunification with one or both parents is not viable as a result.

The juvenile court order includes the following finding with respect to the viability of reunification of the Petitioner with one or both of his parents:

Reunification with one or both of his parents is not viable due to . . . a similar basis under New York law because . . . [the Petitioner’s] parents have both been deceased since [he] was approximately four years old, which is a similar basis under state law.

The juvenile court’s non-viability determination repeats the language, almost verbatim, of subsection 101(a)(27)(J)(i) of the Act. On appeal, the Petitioner asserts that New York case law holds that reunification is not viable under “a similar basis under state law” when a child’s parent is deceased because the death of a parent “falls within the category of “extraordinary circumstances” that would normally justify depriving a natural parent of the custody of his or her child.” The Petitioner cites to several New York judicial decisions in support of that premise. The juvenile court order, however, does not refer to extraordinary circumstances, or mention any of the New York judicial decisions that the Petitioner cites in the brief, and refers only to a “similar basis under New York law.” As the juvenile court order does not specify the applicable state law that the juvenile court considered, the juvenile court order is deficient.

In summary, we concur with the Director that USCIS’ consent to a grant of SIJ classification is not warranted because the Petitioner did not establish a reasonable, factual basis for the juvenile court’s best interest and non-viability of reunification determinations. See subsection 101(a)(27)(J)(iii) of the Act. Further, the juvenile court order is deficient because the non-viability determination repeats the language, almost verbatim, of subsection 101(a)(27)(J)(i) of the Act and does not refer to any applicable state laws demonstrating that the death of the Petitioner’s parents constitutes abuse, neglect, abandonment, or a similar basis. Accordingly, the SIJ petition is not approvable and the Petitioner remains ineligible for SIJ classification.

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 R-N-*, ID# 17051 (AAO June 29, 2016)