



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

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

MATTER OF P-E-G-R-

DATE: MAR. 18, 2016

MOTION ON ADMINISTRATIVE APPEALS 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) §§ 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, revoked approval of the petition after proper notice. The Director concluded that the Petitioner was not eligible for SIJ classification because the *ex parte*, emergency order did not demonstrate the non-viability of reunification with one or both of the Petitioner's parents. We dismissed a subsequent appeal.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief. The Petitioner claims that he is eligible for SIJ classification because the nonviability-of-reunification determination is inherent in the juvenile court's finding of abandonment.

Upon review, we will deny the motion.

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;

(b)(6)

Matter of P-E-G-R-

(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

USCIS may revoke approval of a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, at any time for good and sufficient cause. *See* section 205 of the Act, 8 U.S.C. § 1155. 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], and entered the United States on or about May 30, 2012, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol agents at the time of his entry near [REDACTED] Texas, and was issued a Form I-862, Notice to Appear, and placed in removal proceedings. He was then taken into custody of the Office of Refugee Resettlement (ORR). The Petitioner was subsequently released from ORR custody to his uncle, [REDACTED]. On [REDACTED] 2013, the General Court of Justice District Court Division, [REDACTED] North Carolina (juvenile court), granted an *ex parte* emergency custody order to [REDACTED].

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 (March 24, 2009), <https://www.uscis.gov/laws/policy-memoranda>.

The Petitioner filed this Form I-360 on March 19, 2013, which the Director initially approved. The Director subsequently issued a notice of intent to revoke (NOIR) approval, determining that the juvenile court custody order was deficient and that the Petitioner sought the juvenile court order primarily for immigration purposes. The Petitioner responded to the NOIR with a brief and additional evidence, which the Director found insufficient to overcome the intended basis of denial. The Director revoked approval and the Petitioner timely appealed. On June 30, 2015, we dismissed the appeal, concluding that the juvenile court order was deficient under section 101(a)(27)(J)(i) of the Act because it did not contain the requisite nonviability-of-reunification determination. On motion to reconsider, the Petitioner states that we erred in finding the *ex parte* emergency custody order insufficient under section 101(a)(27)(J)(i) of the Act.

III. ANALYSIS

We first address the Petitioner's statement on motion that we misconstrued the Director's revocation decision. According to the Petitioner, the Director did not revoke approval of the Form I-360 because the juvenile court did not make a permanent finding of the non-viability of reunification with his parents, but because the juvenile court order was not in effect by the time the Petitioner filed his Form I-360.

We have again reviewed the Director's revocation decision, which indicates both that the court's order was not valid when issued and not in effect when the Petitioner filed the Form I-360. We recognize that a validly-issued juvenile court order that terminates based solely on age at the time of filing a Form I-360 does not render a petitioner ineligible for SIJ classification. See USCIS Policy Memorandum PM-602-0117, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* (June 25, 2015), <https://www.uscis.gov/laws/policy-memoranda>. However, as we stated in our prior decision, the Director did not revoke approval of the Form I-360 because the Petitioner had "aged out" of the court's jurisdiction.

The Director determined that the order was not valid for SIJ classification when issued and was therefore deficient under section 101(a)(27)(J)(i) of the Act. We affirmed the Director's determination on appeal. In summary, we stated that the juvenile court's finding of nonviability-of-reunification with the Petitioner's parents was issued on a temporary basis, and determined that this temporary order did not establish that family reunification is no longer a viable option because the Petitioner had not shown that the juvenile court ultimately granted custody to the Petitioner's uncle or another individual on a more than temporary basis. Our June 30, 2015, decision is incorporated here by reference.

On motion, the Petitioner acknowledges that the juvenile court "was unwilling to determine without a final hearing . . . whether it was in the child's best interest to have custody awarded to the uncle." Nevertheless, the Petitioner asserts that the Act "does not say that the child has to be subject to a permanent custody order." The Petitioner avers that the Act requires only that he be placed under the custody of an individual and that reunification with one or both parents is not viable due to abuse, neglect, abandonment or a similar basis under state law. The Petitioner further asserts that the emergency temporary custody order was issued under sections 50-13.5(c)(2) and 50A-204 of the

North Carolina General Statutes (NCGS), and because a finding of abandonment or endangerment is a threshold finding for the court to exercise jurisdiction under NCGS section 50A-204, the Petitioner states that he was therefore eligible for SIJ classification at the time he filed his Form I-360.

The Petitioner's statements on motion do not overcome our prior determination regarding the validity of the juvenile court's order for the purpose of establishing eligibility for SIJ classification. The juvenile court awarded the Petitioner's guardian temporary custody pursuant to NCGS sections 50-13.5(c)(1),(2) and 50A-204. NCGS sections 50-13.5(c)(1) and (2) allow for a court's jurisdiction to enter orders providing for the custody of a minor child under NCGS section 50A-204, the provision for temporary emergency jurisdiction. Temporary emergency jurisdiction of a child is granted under North Carolina law "if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse." N.C. GEN. STAT. ANN. § 50A-204 (West 2013).

The deficiency of the Petitioner's *ex parte* emergency order relates back to the language of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (2008). The TVPRA 2008 addressed eligibility for SIJ classification when a juvenile court or court appointed guardian acts in *loco parentis*, and states, in pertinent part, at section 235(d):

(5) STATE COURTS ACTING IN LOCO PARENTIS. A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section

Based on the language at section 235(d)(5) of TVPRA 2008, the term "custody" at section 101(a)(27)(J)(i) of the Act is not satisfied by the Petitioner's North Carolina *ex parte* emergency order because the juvenile court and the Petitioner's uncle were acting in *loco parentis* until such time as a final hearing could have been conducted. *See In re Brode*, 566 S.E.2d 858, 860 (N.C. App. Ct. 2002) (stating, "[w]hen a court invokes emergency jurisdiction, any orders entered shall be temporary protective orders only." (citations omitted)). The hearing that would have determined on a final basis the questions of custody by the uncle and, by extension, the viability of the Petitioner's reunification with one or both parents did not take place because the Petitioner turned 18 years of age three days after issuance of the *ex parte* order. Accordingly, the *ex parte* emergency custody order was not sufficient to satisfy section 101(a)(27)(J)(i) of the Act at the time it was issued because the court and the uncle were acting in *loco parentis* and there was no finality to the proceedings.

The Petitioner's argument that the non-viability of reunification was demonstrated by the court's finding that the Petitioner was abandoned is not supported by the record. Section 101(a)(27)(J)(i) requires a petitioner to show the non-viability of reunification "due to abuse, neglect, abandonment, or a similar basis found under State law." Although there is a causal connection between the non-viability of reunification and its reasons (abuse, neglect, or abandonment, or a similar basis under state law), the court must make, in essence, two separate findings: first, that a petitioner has been

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. Here, the juvenile court found that the Petitioner had been abandoned but declined to make a non-viability of reunification determination resulting from its abandonment finding because, as noted by the Petitioner, the court “was unwilling to determine without a final hearing . . . whether it was in the child’s best interest to have custody awarded to his uncle.”

Accordingly, the Petitioner is ineligible for SIJ classification because the *ex-parte*, emergency order was not a qualifying juvenile court dependency order when it was issued. Contrary to the Petitioner’s arguments on motion, the order’s expiration three days after its issuance is not the basis for the Petitioner’s ineligibility for SIJ classification, as the age-out provisions described in the *Perez-Olano Settlement Agreement* apply only to those orders that are valid at the time of issuance. The Petitioner does not cite any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy. Moreover, a review of the record indicates that our decision was supported by the evidence in the record, and we did not ignore or mischaracterize the Petitioner’s evidence, or apply an erroneous standard of review. Accordingly, we must deny the motion to reconsider as it does not meet the applicable requirements pursuant to 8 C.F.R. § 103.5(a)(4).

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 motion to reconsider is denied.

Cite as *Matter of P-E-G-R-*, ID# 15720 (AAO Mar. 18, 2016)