



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

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

MATTER OF M-E-M-S-

DATE: MAY 5, 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) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J), 1154(a)(1)(G). The 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 Director, Long Island, New York Field Office denied the petition. On appeal, we remanded the matter to the Director for further action and the Director again denied the petition and certified the matter to us. The Director concluded that the record of proceedings did not provide a reasonable factual basis for the juvenile court order and did not warrant the agency's consent to the Petitioner's request for SIJ classification. On certification, we affirmed the Director's decision.

The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that the petition should be approved because a reasonable factual basis exists for the juvenile court order and the agency's consent to the grant of SIJ classification is warranted.

Upon review, we will deny the motions.

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;

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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

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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 Petitioner was born in El Salvador on [REDACTED]. He claims he entered the United States without inspection, admission, or parole on August 30, 2009, when he was [REDACTED] years old. On [REDACTED], the Family Court of the State of New York, [REDACTED] (juvenile court)

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>.

issued an order appointing the Petitioner's mother as guardian of the Petitioner for seven days, until he turned 21 years old (juvenile court order). The Petitioner subsequently filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the Director denied because the juvenile court order did not make a determination about whether the Petitioner's reunification with his father was not viable due to abuse, neglect, abandonment, or a similar basis found under state law, as required by section 101(a)(27)(J)(i) of the Act. On appeal, the Petitioner submitted a certified copy of a second court order specifying the non-viability of parental reunification due to abuse, neglect or abandonment applied *nunc pro tunc* to the juvenile court order (amended juvenile court order).

In our initial decision, we found that the amended juvenile court order included the requisite non-viability-of-reunification and best-interest determinations and we withdrew the Director's decision on that basis. Despite our withdrawal of the grounds for denial, however, we determined that the Form I-360 remained unapprovable because the amended juvenile court order lacked a reasonable factual basis for its specific findings. We noted that, although the juvenile court order specified that the Petitioner was subjected to abuse, neglect, or abandonment due to the death of his father, the record of proceedings did not include a death certificate for the Petitioner's father or other evidence that the juvenile court relied upon to make this determination. We further stated that the best interest determination was not supported by specific factual findings, and the record of proceedings did not contain evidence from the juvenile court proceedings, such as the original application for guardianship, the transcript of any hearings that were conducted, or other evidence on which the juvenile court relied. Accordingly, we remanded this matter to the Director for further proceedings with instructions to certify the matter to us should the Director deny the Form I-360 anew.

As noted above, the Director again denied the Form I-360 and certified the matter to us. The Director concluded that the record of proceedings did not provide a reasonable factual basis for the amended juvenile court order and did not warrant the agency's consent to the grant of SIJ classification. On certification, we affirmed the Director's decision, finding that the amended juvenile court order still lacked a reasonable factual basis for its specific factual findings.

On motion, the Petitioner submits a brief, claiming that there was a reasonable factual basis for the amended juvenile court order, as well as additional evidence. The evidence which the Petitioner submits on motion includes the following documents that were not previously-submitted: a personal statement from the Petitioner, dated October 15, 2015; an affidavit from the Petitioner's mother, dated October 16, 2015; several decisions from New York courts; excerpts of New York statutes; guides issued to parents and caseworkers relating to neglect and abuse; and articles regarding country conditions in El Salvador.

III. ANALYSIS

The relevant evidence in the record of proceedings does not establish that the Petitioner is eligible for SIJ classification because the amended juvenile court order does not comport with the requirements of subsections 101(a)(27)(J)(i) and (ii) of the Act. When adjudicating a Form I-360, 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.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

An SIJ petitioner bears the burden of establishing the connection between the juvenile court's non-viability of reunification finding and abuse, neglect, abandonment, or a similar basis under a particular state's law. The Petitioner claims that the death of his father establishes a reasonable factual basis for the amended juvenile court order's non-viability determination under New York case law. However, as we noted in our prior decisions, the amended juvenile court order does not specify whether the death of the Petitioner's father is abuse, neglect or abandonment or a similar basis under New York law.

A juvenile court's order should use language that establishes that the specific findings or rulings were made under state law, and should not just mirror or cite to immigration law and regulations. Here, the juvenile court mirrored the language at section 101(a)(27)(J)(i) of the Act by stating generally that: "Reunification of the above-named child with one or both of his parents is not viable due to abuse, neglect, abandonment or a similar basis under state law, because the child's father is deceased." The juvenile court did not specify the ground (abuse, neglect, abandonment, or another similar basis) that applies in the Petitioner's circumstances, or cite to a particular provision of New York law to support its findings. Accordingly, the juvenile court's amended order is deficient in this regard.

The amended juvenile court order is further deficient because it states that it is not in the Petitioner's best interest to return to El Salvador, but neither the juvenile court order itself nor the record of proceedings provides a reasonable factual basis for that determination.

In our decision remanding this matter to the Director, we noted that the record of proceedings did not contain specific evidence on which the best interest determination in the juvenile court order was based, such as the original application for guardianship, the transcript of any hearings that were conducted, or other evidence on which the juvenile court relied, such as statements from individuals who know or who have evaluated the Petitioner with respect to the best interest determination. The Petitioner has not resolved this deficiency with this motion.

On motion, the Petitioner submits a personal statement and an affidavit from his mother, which discuss why he left El Salvador and the potential dangers he faces upon return. However, the

² A "factual basis" means the facts upon which the juvenile court relied in making its rulings or findings.

³ 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> (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the juvenile court's rulings).

personal statement and affidavit are dated after the date of the amended juvenile court order and the Petitioner does not assert that they were considered by the juvenile court prior to issuance of the amended juvenile court order. Accordingly, the personal statement and affidavit, dated in 2015, do not provide a reasonable, factual basis for the juvenile court's best interest determination, which was made in 2014. The Petitioner also submits on motion excerpts of New York statutes, guides issued to parents and caseworkers relating to neglect and abuse, and articles regarding country conditions in El Salvador. As with the personal statement by the Petitioner and the affidavit from his mother, the Petitioner does not claim the juvenile court considered these documents prior to issuance of the amended juvenile court order and, accordingly, they also do not provide a reasonable, factual basis for the juvenile court's best interest determination.

In summary, the Petitioner remains ineligible for SIJ classification because the amended juvenile court order does not provide a sufficient factual basis for the juvenile court's non-viability of reunification and best interest determinations and, therefore, USCIS' consent to the grant of SIJ classification to the Petitioner is not warranted. *See* section 101(a)(27)(J)(iii) of the Act.

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, the Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-E-M-S-*, ID# 16249 (AAO May 5, 2016)