



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

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

MATTER OF W-J-M-

DATE: MAY 10, 2016

APPEAL OF CINCINNATI, OHIO 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, Cincinnati, Ohio, denied the petition. The Director concluded that the juvenile court did not make the requisite factual findings in its dependency order and, therefore, the Petitioner was ineligible for SIJ classification.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that the evidence submitted establishes eligibility for SIJ classification.

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;

(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

(b)(6)

*Matter of W-J-M-*

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[.]

Section 101(a)(27)(J)(iii) of the Act requires the Secretary 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,” meaning that neither the custody order nor the best interest determination were “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.” 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> (quoting H.R. Rep. No. 105-405 at 130 (1997)).

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 was born in Guatemala on [REDACTED]. He entered the United States when he was [REDACTED] years old on or about June 16, 2013, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol agents after his entry near [REDACTED], Texas, was issued a Notice to Appear in removal proceedings, and was taken into the custody of the Office of Refugee Resettlement (ORR). On [REDACTED] 2014, the Court of Common Pleas, Juvenile Division, for [REDACTED] Ohio (juvenile court), granted a custody order to E-J-A-<sup>1</sup>, whom the juvenile court identified as a cousin of the Petitioner (juvenile court order).

The Petitioner filed the Form I-360, Petition for Amerasian Widow(er), or Special Immigrant, based on the juvenile court order. The Director issued a notice of intent to deny (NOID) the Form I-360

---

<sup>1</sup> Name withheld to protect identity.

based on a finding that the juvenile court order did not make any of the findings required by sections 101(a)(27)(J)(i)-(ii) of the Act. The Petitioner responded to the NOID with a brief, which the Director found insufficient to overcome the grounds for the intended denial. The Director denied the Form I-360 and the Petitioner timely appealed.

### III. ANALYSIS

On appeal, the Petitioner concedes that the juvenile court order does not contain the requisite statutory findings and claims that his attorney was “unaware of the specific language required . . . to determine SJIS [sic] eligibility” and, as a result, his attorney did not request inclusion of the language from sections 101(a)(27)(J)(i)-(ii) of the Act into the juvenile court order. The Petitioner asserts on appeal that the Form I-360 should be approved, absent the requisite language in the juvenile court order, because he would have been considered abused, neglected, and dependent under Ohio law due to his circumstances at the time. The Petitioner also claims that a psychological evaluation he submitted in response to the NOID demonstrates that it is not in his best interest to return to Guatemala.

Although the Petitioner requests that we make the non-viability of reunification and best interest determinations based on the record of proceedings before us, it is the juvenile court that decides those issues, not USCIS. *See* section 101(a)(27)(J)(ii) of the Act (providing that the best interest determination is made “in administrative or judicial proceedings”). Once the juvenile court makes the required SIJ findings, USCIS can then fulfill its consent function under section 101(a)(27)(J)(iii) of the Act.

Here, we cannot fulfill our consent function as described under section 101(a)(27)(J)(iii) of the Act because the juvenile court order is deficient in that the juvenile court did not make the SIJ findings described at sections 101(a)(27)(J)(i)-(ii) of the Act, which are: the non-viability of the Petitioner’s reunification with one or both of his parents due to abuse, neglect, abandonment, or a similar basis under Ohio law; and whether it is in the Petitioner’s best interest to be returned to Guatemala. Accordingly, the Form I-360 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 W-J-M-*, ID# 16367 (AAO May 10, 2016)