



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

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

MATTER OF H-S-

DATE: MAY 11, 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 finding in its dependency order regarding the best interest determination 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 withdraw the Director's decision and remand the matter for further proceedings and for the entry of a new decision.

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;

(b)(6)

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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[.]

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 Rwanda on [REDACTED] and is a citizen of the United Kingdom. She last entered the United States on June 17, 2013, as a nonimmigrant visitor pursuant to the Visa Waiver Program. On [REDACTED] 2014, the Court of Common Pleas, Juvenile Division, for [REDACTED] Ohio (juvenile court), granted a custody order (juvenile court order) to Z-B-¹ whom the juvenile court identified as the maternal grandfather of the Petitioner.

The Petitioner filed a 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 based on a finding that the juvenile court order did not make a finding required by section 101(a)(27)(J)(ii) of the Act that it is not in the Petitioner's best interest to be returned to the United Kingdom. The Petitioner responded to the NOID with a brief and additional evidence, 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

The Director correctly determined that the Petitioner did not demonstrate that she was the subject of a qualifying juvenile court dependency or custody order because the juvenile court order that the

¹ Name withheld to protect identity.

Director reviewed granted custody of the Petitioner to her grandfather but did not make the best interest determination required under section 101(a)(27)(J)(ii) of the Act.

One month after the Director's denial decision, the Petitioner obtained, and she submits on appeal, an amended juvenile court order, which is effective *nunc pro tunc*, as of June 4, 2014 (*nunc pro tunc* order). The *nunc pro tunc* order contains additional findings by the juvenile court, including that it is in the Petitioner's best interest to remain in the United States with Z-B-, it is in the Petitioner's best interest "not to be returned to the country of nationality or last habitual residence of her parents as [the Petitioner] would not have the financial or emotional support of her family or extended family," and "[r]eunification is not a viable option with either of [the Petitioner's] parents." The juvenile court also found that the Petitioner's "father's whereabouts are not known and he has not been involved in the [Petitioner's] life."

The *nunc pro tunc* order contains a finding that it would not be in the Petitioner's best interest to be returned to her parents' country of last habitual residence because the Petitioner would not have the financial or emotional support of her family or extended family. This amended language satisfies the required best interest determination described at section 101(a)(27)(J)(ii) of the Act. Accordingly, the Petitioner has overcome the stated basis of the Director's decision to deny the Form I-360. However, because the Form I-360 remains not approvable, we will remand the matter to the Director so that he may enter a new decision into the record of proceedings.²

Section 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, the juvenile 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. Once a juvenile court makes SIJ findings under sections 101(a)(27)(J)(i)-(ii) of the Act, USCIS may then fulfill its consent function under section 101(a)(27)(J)(iii) of the Act.

Although the *nunc pro tunc* order contains the required best interest determination under section 101(a)(27)(J)(ii) of the Act, the juvenile court generally stated that "[r]eunification is not a viable option with either of her parents," but did not link this non-viability of reunification determination to abuse, neglect, abandonment, or a similar basis under Ohio law. In the *nunc pro tunc* order, the juvenile court merely found that the Petitioner and her mother have "significant parent/child conflict and relationship issues and the [Petitioner's] mother does not want to reunify with the [Petitioner] and the [Petitioner] does not want to reunify with . . . [her] mother" but the juvenile court did not

² The Petitioner also asserts on appeal that the Director abused his discretion by not allowing the Petitioner additional time to respond to the NOID so that the Petitioner could obtain the *nunc pro tunc* order prior to issuance of the Director's decision. Because we review the juvenile court order and the *nunc pro tunc* order under our *de novo* review authority, we find no resulting prejudice to the Petitioner, as we have reviewed both orders in reaching our decision.

affirmatively state on which basis -- abuse, neglect, or abandonment, or a similar basis found under Ohio law -- reunification with the Petitioner's mother was not viable.

Similarly, although the juvenile court found that the Petitioner's "father's whereabouts are not known and he has not been involved in the [Petitioner's] life," the juvenile court did not decide whether the Petitioner's reunification with him is not viable due to abuse, neglect, abandonment, or a similar basis under Ohio law. We recognize that the Petitioner is not required to demonstrate that reunification with both her mother and father is not viable; however, the juvenile court did not make the required link between the non-viability of reunification and abuse, neglect, abandonment, or a similar basis under Ohio law for either the mother or father. For this reason alone, the Form I-360 remains not approvable because the *nunc pro tunc* order does not contain the SIJ finding required by section 101(a)(27)(J)(i) 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).

The Petitioner has overcome the Director's reason for denying the Form I-360, as the *nunc pro tunc* order contains the best interest determination required by section 101(a)(27)(J)(ii) of the Act. However, the Petitioner still does not have a qualifying juvenile court order because the juvenile court did not find that reunification with one or both of the Petitioner's parents was not viable due to abuse, neglect, abandonment, or a similar basis under Ohio law, as required by section 101(a)(27)(i) of the Act. As the Petitioner has overcome the stated basis for denial of her Form I-360, the Director will need to issue a new decision into the record of proceedings.

ORDER: The decision of the Director, Cincinnati, Ohio Field Office, is withdrawn. The matter is remanded to the Director, Cincinnati, Ohio Field Office, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of H-S-*, ID# 16366 (AAO May 11, 2016)