



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

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

MATTER OF E-M-

DATE: MAY 11, 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) and 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 District Director, Mount Laurel, New Jersey, denied the petition. The Director concluded that the Petitioner had not established that he was the subject of a qualifying juvenile court order or that his request for SIJ classification was *bona fide* and merited the agency's consent. We withdrew the Director's determination in part, but dismissed the appeal, concluding that the Petitioner had not established the validity of the juvenile court order or a reasonable factual basis for the juvenile court's determination that it was in the Petitioner's best interest not to be returned to his or his parents' previous country of nationality or last habitual residence.

The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that the juvenile court order was valid and that the record establishes that his request for SIJ classification was *bona fide*.

Upon review, we will deny the motion.

#### I. APPLICABLE LAW

A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). A motion to reopen must state the new facts to be provided 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 (USCIS) 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). Consequently, the motion will be denied for the reasons set forth herein.

The burden of proof is on a petitioner to demonstrate eligibility for SIJ classification by a

(b)(6)

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preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Israel on [REDACTED]. He entered the United States on October 12, 2010, at the age of [REDACTED] on a nonimmigrant visitor's visa. On [REDACTED] 2011, the Superior Court of New Jersey, [REDACTED] (juvenile court), issued an Order of Dependency and Findings that granted the Petitioner's aunt and uncle custody over him. The Petitioner thereafter returned to Israel in September 2011 and reentered the United States on October 15, 2013, on a nonimmigrant visitor's visa.

The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on February 18, 2014. The Director denied the Form I-360 and we dismissed the Petitioner's subsequent appeal. The Petitioner now files a timely motion to reopen and reconsider.

## III. ANALYSIS

In our prior decision on appeal, incorporated by reference here, we withdrew the Director's decision in part to find that USCIS erred in going behind the juvenile court order to make a finding that the Petitioner had not been abandoned, despite the juvenile court's specific determination that the Petitioner's reunification with his parents was not viable due to constructive abandonment. However, we ultimately dismissed the Petitioner's appeal, finding that USCIS' consent to the Petitioner's request for SIJ classification was not merited. We further concluded that the Petitioner had not demonstrated that the juvenile court order remained valid after his return from Israel, where he resided for two years before the filing of the instant Form I-360. Upon a full review of the record, as supplemented on motion, the Petitioner has not overcome the grounds for denial.

### A. USCIS' Consent Is Not Warranted

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of the Department of Homeland Security, through 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.<sup>1</sup>

When adjudicating an SIJ Form I-360, USCIS examines the 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 interests determination, as required by sections 101(a)(27)(J)(i) and (ii) of

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<sup>1</sup> H.R. Rep. No. 105-405, at 130 (1997); *see also* Memorandum from Donald Neufeld, Acting Associate Director for Domestic Operations, USCIS, HQOPS 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>.

the Act. USCIS requires the factual basis for the court's findings so it may fulfill its required consent function.<sup>2</sup> 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.<sup>3</sup>

The juvenile court order here includes the requisite determination that it was not in the Petitioner's best interest to be returned to Israel. The court did not, however, make any specific factual findings to provide a reasonable factual basis for the best interest determination. Although the underlying Verified Complaint for the custody order asserts that the Petitioner could not return to Israel because there was no one there to provide for him, the record indicates that the Petitioner returned to Israel several months after the issuance of the order in April 2011 and remained there for approximately two years until October 2013. On motion, the Petitioner submits an undated letter from his former high school guidance counselor, and he revisits the circumstances following his mother's death in 2010 and the subsequent custody actions and proceedings that led to the juvenile court's custody order and determination that it was not in the Petitioner's best interest to be returned to Israel. The Petitioner also proffers the underlying memorandum of law to the juvenile court in support of the Verified Complaint for the custody order request in 2011, and he contends that the juvenile court considered sufficient facts to establish a reasonable factual basis for its best interest determination, regardless of the fact that he did return to Israel shortly thereafter. The memorandum contained representations to the juvenile court that there was "no one in Israel who [was] willing or able to care for" the Petitioner and that he would likely become a ward of the state if he returned there. However, notwithstanding these representations to the juvenile court, the record indicates that the Petitioner later returned to Israel, where he resided for two years with the emotional and financial support of his guardians in the United States, as well as with the assistance of his maternal relatives in Israel. As such, the facts that formed the basis of the juvenile court's best interest determination were proven unsubstantiated when the Petitioner returned to live in Israel. In other words, the facts as presented to the Court no longer exist as they did when the Court determined that it would not be in the Petitioner's best interest to return to Israel. Accordingly, the Petitioner has not demonstrated that USCIS' consent to a grant of SIJ classification, as required by section 101(a)(27)(J)(iii) of the Act, is warranted.

#### B. Validity of the Juvenile Court Order Not Established

A SIJ petitioner must demonstrate that at the time of the Form I-360 filing, he or she had "been declared dependent on a juvenile court located in the United States." Section 101(a)(27)(J)(i) of the Act. A petitioner must establish that he continues to have a valid juvenile court order that has not been vacated, terminated, or otherwise ended. 8 C.F.R. § 204.11(c)(5). USCIS will not deny,

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

<sup>3</sup> 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 27, 2004), <https://www.uscis.gov/archive/archive-laws/archive-memos> (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the juvenile court's rulings).

revoke, or terminate a Form I-360 or an SIJ-based Form I-485, Application to Register Permanent Residence or Adjust Status, if, at the time of filing the SIJ petition: (1) the petitioner is or was under 21 years of age, unmarried, and otherwise eligible; and (2) *the petitioner either is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing.*<sup>4</sup> As discussed, we previously held that the Petitioner had not established the ongoing validity of the juvenile court order after his subsequent departure from the United States and his two year residence in Israel, particularly where, as explained above, the factual basis for the juvenile court's order no longer exists. Consequently, he has not demonstrated that a valid juvenile court order was in place at the time he filed his Form I-360 in February 2014.

On motion, the Petitioner contends that contrary to our prior determination, the juvenile court custody order remained valid and in effect, despite his subsequent return to Israel, "so long as the characteristics of the care given by the guardian are maintained," which he asserts his aunt and uncle did in his case. He does not, however, identify any legal or factual error in our prior determination on this issue. The Petitioner again states that the circumstances that led to his return to Israel were unique as he needed to care for his younger brothers who chose to return to Israel and remain there. He asserts that the juvenile court would have reasonably taken into consideration the circumstances of his temporary return to Israel, and consequently, would not have vacated the custody order as a result. However, the Petitioner has not presented any evidence from the juvenile court in support of this contention, nor does he cite to any other new evidence or relevant, legal authority demonstrating that the juvenile court order remained valid even after the Petitioner departed the United States to reside and work in Israel for approximately two years. Accordingly, the Petitioner has not demonstrated that he was the subject of a valid juvenile court order declaring him a dependent of the court, as required by section 101(a)(27)(J)(i) of the Act, when he filed his Form I-360 upon his return from Israel. Consequently, the Petitioner has not established his eligibility 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, 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 E-M-*, ID# 16260 (AAO May 11, 2016)

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<sup>4</sup> See *Stipulation, Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. 2005); See also USCIS Policy Memorandum PM-602-0117, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* 4 (June 25, 2015), <https://www.uscis.gov/laws/policy-memoranda> (emphasis added).