



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

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

MATTER OF H-S-

DATE: OCT. 3, 2016

APPEAL OF LONG ISLAND, NEW YORK 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-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The District Director, New York, New York, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition). The Director concluded that the juvenile court order was deficient because it lacked a reasonable factual basis for the non-viability and best interest determinations. Accordingly, the Director concluded that U.S. Citizenship and Immigration Services' (USCIS) consent was not warranted in this case.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that his evidence establishes the requisite eligibility criteria and that the Director improperly withheld her consent. We issued a notice of intent to dismiss the appeal (NOID), advising the Petitioner of contradictory information in the record, and the Petitioner has timely responded.

Upon *de novo* review, we will dismiss the appeal.

I. 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

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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 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 (DHS), 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.¹

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. ANALYSIS

The record reflects that the Petitioner was born in India on [REDACTED]. He entered the United States without inspection on May 8, 2013, at the age of [REDACTED]. On [REDACTED] 2015, the Family Court of the State of New York, [REDACTED] New York (juvenile court), granted guardianship of the Petitioner to H-M-² (Order Appointing Guardian). The juvenile court simultaneously entered an order relating to the Petitioner's eligibility for SIJ status (SIJ Status Order). The Petitioner filed the instant SIJ petition on March 3, 2015, when he was [REDACTED] years of age.

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>.

² We provide the initials of individual names throughout this decision to protect identities.

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When adjudicating an SIJ petition, USCIS first 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 the Act. Once that has been determined, USCIS requires evidence of the factual basis for the court's findings so it may fulfill its required consent function.³ 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.⁴

The juvenile court stated in its SIJ Status Order, that “[r]eunification with one or both of [the Petitioner’s] parents is not viable due to abuse and neglect due to excessive corporal punishment inflicted by his father.” The juvenile court stated the following in making the best interest determination: “It is not in the child’s best interest to be removed from the United States and returned to India his country of nationality or country of last habitual residence of the child or his birth parent or parents.” Although the record includes the evidence upon which the court relied in making these determinations, including the original petition for guardianship and a transcript of the juvenile court hearing on [REDACTED] 2015, the statements the Petitioner made when he was first encountered by the Department of Homeland Security (DHS) are inconsistent with later statements the Petitioner made regarding his SIJ application.

The transcription of the [REDACTED] 2015, proceeding in the juvenile court reflects that the Petitioner testified that while he resided in India his father beat him on a daily basis. The Petitioner specifically testified that in 2010 his father beat him with a metal bracelet until the Petitioner was bleeding over his eye. He indicated to the juvenile court that he went to the hospital and that he still bears a scar over his right eye that was the “result of that particular incident[.]” The Petitioner also testified that his mother and maternal grandfather subsequently helped arrange and paid for his travel to the United States. Based in part on this testimony, the juvenile court awarded guardianship of the Petitioner to his mother’s cousin, H-M-, and simultaneously issued an order determining that the Petitioner’s reunification with one or both of his parents is not viable due to “abuse and neglect due to excessive corporal punishment inflicted by [his] father.”

The Petitioner’s administrative record contains information that contradicts the testimony that he provided to the juvenile court. On June 13, 2013, he was interviewed by an officer with U.S. Customs and Border Protection (CBP) after the Petitioner had applied for entry into the United States through the [REDACTED] Arizona Port of Entry. According to a record of the interview on Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, the Petitioner asserted that his life was in danger in India because he was a member of a certain political party, and that his uncle had paid \$4,297 for his travel to the United States. According to a Form I-

³ A “factual basis” means the facts upon which the juvenile court relied in making its rulings or findings.

⁴ 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) (where the record demonstrates a reasonable factual basis for the juvenile court’s order, USCIS should not question the juvenile court’s rulings), <https://www.uscis.gov/laws/policy-memoranda>.

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870, Record of Determination/Credible Fear Worksheet, on June 24, 2013, the Petitioner advised an asylum officer that he was afraid to return to India because he had been a worker with the [REDACTED] since January 2012, and was beaten by members of the opposition [REDACTED] in September 2012. Specifically, the Petitioner responded as follows to the asylum officer's questions:

Q. What led to the beating in 9/2012?

A. I was returning home after participating in a blood donation drive in [REDACTED]

Q. How were you beaten?

A. They punched and kicked us.

Q. How many people beat you?

A. 5-6 people.

Q. Were you alone?

A. Yes.

Q. Did you sustain any injuries?

A. One broken rib and injuries on the eye.

Q. What happened to your eye?

A. They hit me with sticks and I got stitches on my right eye.

The Petitioner testified that he decided to leave India because he feared he would be killed by members of the [REDACTED] and that there was no other reason that he feared returning to India. Accordingly, the claims the Petitioner made to the juvenile court regarding the reasons he left India, how, and when he obtained the scar over his right eye, and who paid for his travel to the United States are contradicted by claims he made to DHS employees in prior proceedings.

In response to our NOID advising the Petitioner of the above contradictory information, the Petitioner asserts that his statements to various DHS officers and to the juvenile court are not inconsistent, but were made within different contexts. The Petitioner asserts that he did not tell the juvenile court about his past political persecution because "the issues related to [his] fear of political persecution did not come up" and were not relevant to the guardianship proceedings. Although he had advised CBP that his uncle paid for his travel to the United States, and then told the juvenile court that his grandfather and mother paid for his travel, he now claims for the first time that his grandfather and his uncle paid for his travel to the United States. The Petitioner also asserts that he did not tell CBP that his father abused him because he "had no awareness" that the agency would have had any interest in the alleged abuse or be able to assist the Petitioner. He does not explain why he subsequently attested to an asylum officer that there was not "any other reason why [the Petitioner] fear[ed] returning to India" when asked this question on June 24, 2013. Despite testifying to the juvenile court that the scar on his eyebrow was the direct result of his father's abuse, the Petitioner now states that he was "injured severely twice on the same area" of his face: once by

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his father's metal bracelet in 2010 and then by the [REDACTED] when they beat him with a stick in 2012. In short, the Petitioner attempts to resolve his prior inconsistent statements by now claiming that all of them are correct, suggesting that he "had no awareness" that the various government agencies and individuals to whom he presented these statements would have been interested in a single, consistent description of all of the alleged events that caused him to travel to the United States.

Upon review, the record does not establish a reasonable factual basis for the juvenile court's non-viability and best interest determinations. Based on the Petitioner's testimony, the juvenile court concluded that the Petitioner's father had abused him, and it was not in the Petitioner's best interest to be returned to India. However, information on which the juvenile court relied in making the determinations is inconsistent with other information that the Petitioner provided to various DHS officers in prior encounters, and the Petitioner has not resolved these on appeal. These inconsistencies undermine the Petitioner's claim that his request for SIJ classification is *bona fide* and that he sought the juvenile court order primarily to gain relief from his father's abuse rather than solely to obtain lawful immigrant status in the United States. Accordingly, the record does not establish that the juvenile court was aware of all of the Petitioner's claims and made an informed decision in reaching its non-viability and best interest determinations despite the discrepancies in his statements.

Upon *de novo* review, although the juvenile court made the requisite SIJ determinations, the record does not establish a reasonable factual basis for such determinations and does not demonstrate the *bona fide* nature of the Petitioner's request for SIJ classification. Accordingly, the Petitioner has not established that his request for SIJ classification merits USCIS consent under subsection 101(a)(27)(J)(iii) of the Act to a grant of SIJ classification.

III. CONCLUSION

The Petitioner has not shown that his request for SIJ classification merits the agency's consent. Consequently, the Petitioner does not meet the requirements of section 101(a)(27)(J) of the Act.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of H-S-*, ID# 69058 (AAO Oct. 3, 2016)