



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

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

MATTER OF A-P-S-

DATE: OCT. 7, 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 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 petition, concluding that the juvenile court order lacked a reasonable factual basis for its determinations that the Petitioner's reunification with one or both parents was not viable due to abuse, neglect, abandonment, or a similar basis under State law, and that it was not in his best interest to return to India. The Director determined that the Petitioner provided inconsistent testimony about his reasons for leaving India, which undermined his claim that he was abused by his father. The Director concluded that the Petitioner filed the petition primarily to obtain lawful permanent residence in the United States, not primarily to seek the protection of the juvenile court, and the consent of United States Citizenship and Immigration Services (USCIS) was not warranted.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the juvenile court articulated a reasonable factual basis for its non-viability and best interest determinations, that its findings are supported by the record, and that the Director improperly withheld her consent. The Petitioner claims that the Director's misinterpretation of the evidence to support her denial is arbitrary and capricious.

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 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, 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>

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).

---

<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, 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>.

## II. ANALYSIS

A full review of the record, as supplemented on appeal, does not establish the Petitioner's eligibility. The appeal will be dismissed for the following reasons.

The record reflects that the Petitioner was born in India on [REDACTED]. He claims to have entered the United States without inspection, admission, or parole at the age of [REDACTED]. On [REDACTED] 2015, the Family Court of the State of New York, [REDACTED] entered an order in which the juvenile court made specific findings as described at sections 101(a)(27)(J)(i)-(iii) of the Act relevant to whether the Petitioner qualifies for SIJ classification (SIJ order).<sup>2</sup> The juvenile court appointed B-K-<sup>3</sup> as guardian for the Petitioner in a separate order dated [REDACTED] 2015 (guardianship order). The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), based on the SIJ order.

The record before the Director included the following documents from the juvenile court proceedings: the petition of B-K- seeking her appointment as guardian for the Petitioner (guardianship petition), the Petitioner's guardianship petition, as a person over the age of 14, requesting that B-K- be appointed as his guardian (petition by person over 14), the Petitioner's affidavit as person subject to guardianship (affidavit), the Petitioner's amended affidavit of minor (amended affidavit), the SIJ order, and the guardianship order. In these documents, the Petitioner and B-K- each stated that the Petitioner's father was abusive toward the Petitioner when the Petitioner's father drank alcohol, that he drank alcohol daily, and that the Petitioner's mother and older brothers were unable or unwilling to protect the Petitioner from his father's abuse. The Petitioner described two events in detail, the first one occurring in June 2012, when he claimed to have inadvertently stayed out too late. The Petitioner stated that when he arrived home, his father slapped him 10-15 times, causing a "swollen and bloody lip." The Petitioner indicated that on August 5, 2012, he forgot to protect the onions with pesticide before going to the market with his three brothers, and that when he got home, the onions were ruined. The Petitioner described his father beating him 10 times with a broomstick on his back and side, causing injury. Early the next morning, he said he left for his aunt's nearby residence, and vowed never to return home. He stated that his aunt did not want him to stay with her because she was afraid of the Petitioner's father's short temper, and that she told the Petitioner to go to the United States, where he would be safe from his father. On appeal, the Petitioner submits the transcript from the juvenile court proceedings. We have reviewed all of the evidence in the record.

When adjudicating an SIJ petition, USCIS examines the juvenile court order to determine if the order contains the requisite findings of dependency or custody; non-viability of family reunification due to parental abuse, neglect or abandonment; and the best-interest determination, as stated in sections 101(a)(27)(J)(i) and (ii) of the Act. USCIS requires the factual basis for the court's findings

---

<sup>2</sup> The SIJ order reflects inconsistent dates, [REDACTED] 2015, typed on the first page, and [REDACTED] 2014, handwritten by the court on page two.

<sup>3</sup> Name withheld to protect the identity of the individual.

*Matter of A-P-S-*

so it may fulfill its required consent function.<sup>4</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>5</sup>

While the transcript discusses reasons for the court's non-viability determination, there are unexplained inconsistencies in the juvenile court record of proceedings such that we cannot conclude that the juvenile court made an informed decision. As noted by the Director, the Petitioner's sworn testimony at his interview on the Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application) to the effect that one of the reasons he came to the United States was because his aunt in India told him that he could "study and become somebody," was inconsistent with his affidavit, amended affidavit, and the petition by person over 14, in which the Petitioner stated that his aunt felt it was too dangerous for him to stay with her in their village, because the Petitioner's father would find him there, and continue to beat him up.

On appeal, the Petitioner claims that his discussion with his aunt in India about getting an education in the United States is not inconsistent with his other statements at the adjustment application interview, where he informed the immigration officer that he was leaving India to get away from his father. While the Petitioner may have had dual motives in coming to the United States, upon *de novo* review, there are several other unexplained inconsistencies in the juvenile court proceedings which raise questions about whether his primary motive in leaving India was to escape his father's claimed abuse. B-K- referenced in the guardianship petition, and the Petitioner stated in his affidavit (p. 2), in the amended affidavit (p. 2), and in the petition by person over 14 (para. 14), that the Petitioner had "other siblings" who "feared the wrath of their father," "older siblings" who were unable to stop the Petitioner's father from abusing the Petitioner, and "three brothers" who accompanied the Petitioner to the market on August 5, 2012 (guardianship petition, paragraph 13). In sworn testimony before the juvenile court, however, the Petitioner stated that he had one elder brother who did not live at home with his parents, but lived elsewhere with relatives (transcript, [REDACTED] 2015, pp. 9, 18-19), and in his sworn testimony at his adjustment application interview, the Petitioner stated that he had one brother, who lived at home with him and his parents (p. 2). Additionally, the Petitioner testified before the juvenile court that on the evening of August 5, 2012, he went to the market with friends, not with his three brothers as stated in the other documents filed with the juvenile court (transcript, [REDACTED] 2015, p. 12). There is no explanation of record for these inconsistencies, which are material to the Petitioner's claim that he was abused by his father, and lacked protection from his three older brothers.

---

<sup>4</sup> A "factual basis" means the facts upon which the juvenile court relied in making its rulings or findings.

<sup>5</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 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>.

*Matter of A-P-S-*

Further, while the Petitioner and B-K both stated in documents filed with the juvenile court that officials in Guatemala confiscated his passport, the Petitioner submitted a copy of his passport in support of his adjustment application, that was issued in [REDACTED] on June 25, 2012, six weeks before the Petitioner claimed to have left the home of his parents on August 5, 2012. The date of issuance of the passport is inconsistent with the Petitioner's claim that he decided to leave India on August 5, 2012, after his father beat him multiple times with a broomstick. Additionally, although the Petitioner testified before the juvenile court and stated in documents filed with the juvenile court that he left India in September 2012, the Petitioner's Form G-325A, Biographic Information reflects that the Petitioner resided in India until January 2013. The Petitioner did not submit a copy of the home study required by and submitted to the juvenile court (transcript, p. 5). The record contains no explanation or objective documentation resolving these inconsistencies.

The juvenile court's best interest determination is also based on these inconsistent facts in the record. The best interest determination is a deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of a petitioner to be returned to a placement in the country of nationality or last habitual residence of the petitioner or his or her parents. A finding that a particular custodial placement is the best alternative available to a petitioner in the United States does not necessarily establish that a placement in a petitioner's country of nationality would not be in the petitioner's best interest.<sup>6</sup>

Due to the inconsistencies discussed above, the Petitioner has not established that the SIJ order is based on a reasonable factual basis and that the request for SIJ classification is *bona fide*. Our consent to SIJ classification, as required by section 101(a)(27)(J)(iii) of the Act, is not warranted.

### III. CONCLUSION

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 A-P-S-*, ID# 8500 (AAO Oct. 7, 2016)

---

<sup>6</sup> See *Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status*, 58 Fed. Reg. 42843, 42848 (Aug. 13, 1993).