



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

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

MATTER OF M-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-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 petition, concluding that the order did not provide the corresponding state statute for the non-viability determination and that United States 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 copies of previously submitted evidence.

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

I. 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. *See* 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;

*Matter of M-S-*

(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 United States 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*, 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 by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). All the evidence in the record has been reviewed, even if all of the evidence is not discussed in the decision.

## 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 reason.

The Petitioner is a citizen and native of India. On [REDACTED] 2015, the Family Court of the State of New York, [REDACTED] entered an order (juvenile court order), in which the juvenile court made specific findings as described at sections 101(a)(27)(J)(i)-(ii) of the Act relevant to whether the Petitioner qualifies for SIJ classification. The juvenile court also appointed G-S-<sup>2</sup> as guardian for the Petitioner in a separate order.

<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>.

<sup>2</sup> Initials are used throughout this decision to protect the identities of the individuals.

*Matter of M-S-*

Although the juvenile court found that reunification with one or both of the Petitioner's parents is not viable due to "a similar basis under New York law," the juvenile court order is deficient under section 101(a)(27)(J)(i) of the Act.<sup>3</sup> The plain language of the statute requires that an SIJ petitioner demonstrate that "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." Section 101(a)(27)(J)(i) of the Act. Therefore, a 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. The Act explicitly defers findings on issues of child welfare under state law to the expertise and judgment of the juvenile court.<sup>4</sup> However, in adjudicating an SIJ petition, we examine the juvenile court order to determine if the court made the requisite findings of dependency or custody, non-viability of reunification with one or both parents, and the best interests determination, required by sections 101(a)(27)(J)(i) and (ii) of the Act.

Here, the juvenile court found that reunification was not viable due to a similar basis under state law because the Petitioner's father refuses to allow him to return to the home because the Petitioner refused to partake in an arranged marriage at the age of [REDACTED]. However, the juvenile court did not cite to a particular provision of New York law to indicate what the "similar basis under New York law" is or any other statute to support its findings. In fact, the transcript of the juvenile court proceedings show that the court did not find that there was neglect or abandonment, as the Petitioner contended, but instead noted that there were "circumstances that would allow [the Petitioner] to remain here as the father would not be providing, perhaps, [what] could be deemed adequate care and supervision." *Transcript of Guardianship Proceeding*, New York Family Court, [REDACTED] (2015). Here, the juvenile court determined that the Petitioner's parents did not neglect or abandon the Petitioner, and did not specify any applicable state laws that are similar to the nature and elements of abuse, abandonment, or neglect pursuant to the Act. *See id.*

In his brief on appeal, the Petitioner contends that the basis of the family court finding of "a similar basis under state law" was properly determined and that forced marriage is against New York law so the Petitioner's father's behavior "clearly constitutes" endangering the welfare of the child. However, the juvenile court made no such determination. When adjudicating an SIJ petition, USCIS examines the juvenile court order only to determine if it contains the requisite findings of dependency or custody; nonviability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner's best interests, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. As stated above, USCIS is not the fact finder in regards to these issues of child welfare under state law; we defer such findings to the expertise and judgment of the juvenile court. Section 101(a)(27)(J)(i)-

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<sup>3</sup> The Director found that the Petitioner's request for SIJ classification was not *bona fide* and did not merit USCIS' consent, but as the order is otherwise deficient, we do not reach the issue of consent in this decision.

<sup>4</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).

*Matter of M-S-*

(ii) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (referencing the determinations of a juvenile court or other administrative or judicial body). Here, as the juvenile court order specifically states that the Petitioner was not abandoned or neglected by either of his parents and does not indicate the applicable state law that constitutes a similar basis, the order is deficient because it fails to comply with section 101(a)(27)(J)(i) of the Act.

### 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, 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 M-S-*, ID# 9885 (AAO Oct. 7, 2016)