



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

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

MATTER OF G-S-

DATE: OCT. 14, 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 there had been no determinations by the juvenile court that the Petitioner was dependent, that his 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, prior to the filing date of the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant (SIJ petition). Accordingly, the Director concluded that the Petitioner was not eligible for SIJ status.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that, through no fault of his own, he could not obtain the juvenile court order until the day before his 21st birthday, at which time it would have been too late to timely file the SIJ petition by mail. The Petitioner claims that the SIJ petition was filed, and the juvenile court signed the SIJ status order, before he turned 21, and that under these circumstances, it would be unfair to deny the SIJ petition.

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

(b)(6)

Matter of G-S-

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 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.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

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 16. On [REDACTED] 2015, the Petitioner filed the SIJ petition. On [REDACTED] 2015, the Family Court of the State of New York,

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>.

Matter of G-S-

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 (juvenile court order).² The juvenile court appointed B-S-³ as guardian for the Petitioner in a separate order dated 2015 (guardianship order).

A. The Petitioner Was Ineligible for SIJ Classification at the Time of Filing the Form I-360

The regulation at 8 C.F.R. § 204.11(d)(2) requires that that a juvenile court dependency order must be submitted with the initial filing of the SIJ petition. The instructions to the SIJ petition require that the petitioner submit a copy of the court or administrative documents that establishes his or her eligibility for the SIJ classification. See 8 C.F.R. §§ 103.2(a)(1) and (b)(1) which provide, respectively, that the form instructions are incorporated into the applicable filing regulations, and that the benefit request must be filed with all initial evidence required by applicable regulations. Here, the Petitioner did not submit the requisite juvenile court order with his SIJ petition filed on 2015. He also did not, after filing his SIJ petition, submit a juvenile court order declaring him dependent on that court on a date on or before 2015.

On appeal, the Petitioner claims that he filed the guardianship petition in September 2014, and that all of the required documentation, with the exception of the home study, had been submitted to the juvenile court prior to 2015. He states that the agency ordered to perform the home study repeatedly refused to conduct the home study because he lived too close to that the agency claimed it did not have jurisdiction to perform the home study, and that he finally obtained permission from the court to have a private home study conducted. He claims that his final hearing date with the juvenile court was on the eve of his 21st birthday, and rather than wait to submit the SIJ petition until he would have been statutorily ineligible to file the SIJ petition after turning 21, he filed the SIJ petition without first obtaining the juvenile court order.

The Petitioner is required to establish eligibility at the time of filing the immigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, the Petitioner was not eligible for SIJ classification because at the time of filing the SIJ petition he had not "been declared dependent on a juvenile court located in the United States." Section 101(a)(27)(J)(i) of the Act.

The Petitioner requests that we approve the SIJ petition because he satisfied all the requirements for SIJ classification prior to his turning 21 years old. The Petitioner claims that the delay in filing was not his fault, and that Congress intended that we construe the statute liberally to protect the minor. Nevertheless, SIJ classification requires a petitioner to demonstrate that he or she has been declared

² The SIJ order reflects inconsistent dates, 2015, typed on the first page, and 2014, handwritten by the juvenile court on page two.

³ Name withheld to protect the identity of the individual.

dependent on a juvenile court located in the United States, and that eligibility for the immigration benefit has been established at the time of filing. See section 101(a)(27)(J)(i) of the Act; 8 C.F.R. §§ 103.2(b)(1) and 204.11(c) and (d). The Petitioner does not cite to any authority that would allow USCIS to waive the requirement of obtaining the required juvenile court dependency order, which is the basis for SIJ classification eligibility, prior to the filing date of the SIJ petition.

B. USCIS' Consent is Not Warranted

Upon further *de novo* review, our consent to the grant of SIJ classification is not warranted because the juvenile court order does not contain a reasonable factual basis for its non-viability and best interest determinations.

When adjudicating an SIJ petition, 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 interest determination, as required by sections 101(a)(27)(J)(i) and (ii) of the Act. USCIS requires the factual basis for the court's findings so it may fulfill its required consent function.⁴ 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.⁵

The juvenile court found that the Petitioner's reunification with one or both of his parents was not viable due to abandonment and that it was not in the Petitioner's best interest to return to India. The juvenile court does not, however, state which parent abandoned the Petitioner, and does not provide a reason in support of its abandonment and best interest determinations. As there is no reasonable factual basis for the juvenile court's findings, we cannot determine that the juvenile court made an informed decision, and that the Petitioner's request for SIJ classification was *bona fide*. Under these circumstances, our consent to SIJ classification is not warranted. For this additional reason, the SIJ petition may not be approved.

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.

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

⁵ 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).

Matter of G-S-

ORDER: The appeal is dismissed.

Cite as *Matter of G-S-*, ID# 9961 (AAO Oct. 14, 2016)