



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

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

MATTER OF Y-G-P-R-

DATE: OCT. 21, 2016

APPEAL OF CINCINNATI, OHIO 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, Cincinnati, Ohio, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the Petitioner's request for SIJ classification did not warrant consent because he had not established that he sought the juvenile court order primarily for the purpose of obtaining relief from abuse, neglect, or abandonment, and not for the purpose of obtaining lawful permanent residence status.

The matter is now before us on appeal. On appeal, the Petitioner submitted a brief. We thereafter issued a notice of intent to dismiss (NOID), notifying the Petitioner that the record did not establish his eligibility because the requisite non-viability determination in the juvenile court order was deficient. In addition, we noted that there was no reasonable factual basis for the juvenile court's determination that it was not in the Petitioner's best interest to be returned to his country of nationality or last habitual residence. The Petitioner timely responded to the NOID with additional evidence, including a new juvenile court order. He claims that the new court order establishes his eligibility as it sets forth the factual findings and legal conclusions on which the court based its non-viability and best interest determinations.

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 primarily to obtain immigrant status.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, 376 (AAO 2010).

¹ 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>.

II. ANALYSIS

The Petitioner was born in Guatemala on [REDACTED] and entered the United States in July 2013, without inspection, admission, or parole. On [REDACTED] 2014, when the Petitioner was [REDACTED] years old, a magistrate at the Court of Common Pleas, Juvenile Division, in [REDACTED] Ohio issued a *Magistrate Decision/Order* (2014 magistrate order), temporarily awarding custody to the Petitioner's mother and making specific findings related to the Petitioner's eligibility for SIJ classification. On [REDACTED] 2014, a juvenile court judge issued an order (juvenile court order), adopting the magistrate's order as the final decision and judgment in the custody matter. On appeal, in response to our NOID, the Petitioner obtained a supplemental magistrate order, issued on [REDACTED] 2016, making specific factual findings. The 2016 magistrate order was issued as a temporary order pending approval or disapproval by a judge of the juvenile court. The record does not contain a subsequent order by a juvenile court judge approving and adopting the 2016 magistrate order.

Upon *de novo* review of the record, as supplemented on appeal, the Petitioner has not established his eligibility for SIJ classification.

A. The Non-Viability Determination in the 2014 Order Is Deficient

The Director determined that the Petitioner's request for SIJ classification was not *bona fide*, and therefore, did not merit USCIS' consent under section 101(a)(27)(J)(iii) of the Act. However, before USCIS even reaches the question of whether such consent is warranted, a petitioner must first establish that he or she has a juvenile court order containing 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.² As discussed in our NOID and here, our review of the record does not show that the requirements of sections 101(a)(27)(J)(i) and (ii) have been satisfied.

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. The Act explicitly defers findings on issues of child welfare under state law to the expertise and judgment of the juvenile court. *See id.* The 2014 magistrate custody order here, adopted as the final judgment by the juvenile court, includes the requisite judicial determination that it was not in the Petitioner's best interest to be returned to Guatemala. However, the non-viability determination in the order is deficient as it merely mirrors the statutory language, stating that parental reunification with "both" of the Petitioner's parents was not viable "due to abuse, neglect, or abandonment or similar basis found under state law," without specifying which of the three grounds under state law supported the

² *See also* Neufeld Memorandum, *supra*, at 2 (stating that under the modifications of the Trafficking Victims Protection Reauthorization Act of 2008, a "juvenile court must find that the juvenile's *reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law*").

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determination, as required by the Act. Further, the non-viability determination relating to *both* parents is inconsistent with the court's award of sole legal custody of the Petitioner to his mother. In his response to our NOID, the Petitioner does not address the deficiency of the non-viability determination in the 2014 juvenile court order and instead submits a supplemental magistrate order, which we will address later in this decision. Accordingly, the 2014 juvenile court order does not contain the requisite non-viability determination that conforms to the requirements of the Act and is therefore deficient.

B. The 2016 Magistrate Custody Order Is Insufficient to Establish the Petitioner's Eligibility

On appeal, the Petitioner contends that the new supplemental magistrate custody order, issued [REDACTED] 2016, is sufficient to establish his eligibility for SIJ classification. However, our review demonstrates that this order is also insufficient to demonstrate the Petitioner's eligibility.

1. The Non-Viability Determination in the 2016 Magistrate Order Is Deficient

As with the 2014 juvenile court order, the Petitioner's 2016 magistrate order also contains a deficient non-viability determination. The new order now specifies that parental reunification with the Petitioner's father was not viable. However, it again generally mirrors the language of the statute, indicating that reunification was not viable due to "abuse, neglect, *or* similar basis found under state law." (Emphasis added). Although the order includes findings of fact by the court, it does not identify the specific ground(s) under state law on which the magistrate relied in rendering the non-viability determination. In addition, the 2016 magistrate order does not list abandonment amongst the other grounds set forth as the basis for the non-viability determination. This is inconsistent with the underlying custody complaint asserting abandonment by the Petitioner's father and with the court's finding of abandonment in the earlier 2014 custody order. Further, the 2014 order in which the court specifically indicated that the complaints of abuse and neglect were "withdrawn by the complainant," the Petitioner's mother, contradicts the non-viability determination in the 2016 order based in part on abuse and neglect. Accordingly, the non-viability determination in the 2016 order also does not comply with the statutory requirements of section 101(a)(27)(J)(i) and is deficient.

2. The Record Does Not Show that the 2016 Order Was Issued in Accordance with State Law

The 2016 magistrate order indicates that the proceedings were conducted under Chapter 2151 of the Ohio Revised Code relating to juvenile court proceedings. Section 2151.011(B)(6) of the Ohio Revised Code defines "child" in that chapter as "a person who is under eighteen years of age."³ See also Ohio Rev. Code Ann. § 3109.01 (Age of majority in Ohio is 18 years of age). Here, the

³ Section 2151.011(B)(6) of the Ohio Revised Code also allows the juvenile court to exercise "jurisdiction over any person who is adjudicated an unruly child *prior to* attaining eighteen years of age until the person attains twenty-one years of age," in which case, "an unruly child shall be deemed a 'child' until" age 21. (Emphasis added) The record does not establish that the magistrate exercised jurisdiction over the Petitioner as a child under this exception, as the magistrate order does not cite to any statutory authority for its exercise of jurisdiction over the Petitioner after his [REDACTED] birthday.

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Petitioner did not meet the definition of child under state law for purposes of custody proceedings when the magistrate court issued the custody order in [REDACTED] 2016 as he was already over the age of [REDACTED] years of age. Although the order references the Petitioner as a “child,” it does not identify the statutory or legal authority under Ohio state law on which the magistrate relied in assuming jurisdiction over the Petitioner as a minor child after he had already turned [REDACTED] years of age. Further, the Petitioner, through counsel of record, initially indicated on appeal that the juvenile court had denied his request for modification of the 2014 custody order on the grounds that the court lacked jurisdiction. Neither the 2016 magistrate order nor the record establishes the statutory authority under which the magistrate then subsequently assumed jurisdiction over the Petitioner after the latter had already attained [REDACTED] years of age. Consequently, the Petitioner has not demonstrated that the 2016 magistrate order was issued and awarded custody of the Petitioner in accordance with state law as required.

3. The 2016 Magistrate Order Is Not a Final Order

The 2016 magistrate order is also not sufficient to establish the Petitioner’s eligibility because it is not a final order of the juvenile court. As discussed, the Act requires an SIJ petitioner to demonstrate that reunification with one or both of his or her parents is not viable. Section 101(a)(27)(J)(i) of the Act. The 2016 magistrate order awarding custody of the Petitioner to his mother was in effect on a *temporary basis* and was subject to approval or disapproval by a judge of the juvenile court. The record does not show that the juvenile court subsequently issued a final judgment adopting the magistrate order as the final decision in the custody matter. The temporary nature of the magistrate custody order is incompatible with the non-viability determination in the order, and thus, cannot establish that “family reunification is no longer a viable option,” where the Petitioner has not shown that the court proceedings resulted in a final order.⁴ See section 235(d)(5) of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457 (providing that a court-appointed custodian acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility).⁵

C. USCIS Consent Is Not Warranted

As previously indicated, pursuant to section 101(a)(27)(J)(iii), the Petitioner’s request for SIJ classification must warrant USCIS consent. The Petitioner must establish that his request for SIJ classification is *bona fide*; in essence 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 primarily to obtain immigrant status.⁶ In order to fulfill its consent function,

⁴ As we have discussed several grounds for determining the 2016 magistrate order to be deficient, we make no further finding regarding whether it can be considered an order of the juvenile court. The order specifies that it is subject to approval or disapproval by an assigned judge of the juvenile court before it can become a final judgment of the juvenile court. However, unlike the 2014 court order, the record does not show that the 2016 order was ever approved and adopted by the juvenile court.

⁵ See also Neufeld Memorandum, *supra*, at 2.

⁶ H.R. Rep. No. 105-405, *supra*; see also Neufeld Memorandum, *supra*, at 3.

USCIS requires a factual basis for a juvenile court's non-viability of parental reunification and best interest determinations.⁷ 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.⁸

The Director concluded that the Petitioner's request for SIJ classification was not *bona fide*, because at the time of his entry, the Petitioner told U.S. border patrol officials that he had not seen his father in over nine years and was coming to reside with his mother, and because the Petitioner had already been in the physical and legal custody of his mother when the latter filed the custody complaint that served as the basis for juvenile court order here. The Director therefore determined that the Petitioner's primary intention in seeking a juvenile court order was to obtain lawful status in the United States and not primarily to gain relief from abuse, neglect, or abandonment as required. We disagree in part with the Director's findings on this issue. As previously discussed, when adjudicating an SIJ petition, we examine the juvenile court order only to determine if it contains the requisite findings of dependency or custody; non-viability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner's best interests. We are not the fact finder in regards to these issues of child welfare under state law. Thus, we examine the relevant evidence only to ensure that the record contains a reasonable factual basis for the court's order.⁹ Here, the Director did not engage in the requisite inquiry into whether there was a reasonable factual basis for the court's judicial determinations. Further, the facts on which the Director relied do not necessitate a conclusion that a petitioner sought a juvenile court order primarily to gain immigrant status, particularly if the record otherwise establishes a petitioner's statutory eligibility and a reasonable factual basis for the juvenile court's best interest and non-viability determinations. We therefore withdraw the Director's decision insofar as it went behind the requisite juvenile court order to draw a subjective conclusion that the Petitioner's request for SIJ classification was not *bona fide*.

However, notwithstanding our determination, the present record does not establish a reasonable factual basis for the juvenile court's best interest determination. As noted in our NOID, the 2014 juvenile court order did not make any factual findings to provide a factual basis for its determination that it was not in the Petitioner's best interest to be returned to Guatemala. In response to our NOID, the Petitioner submits the 2016 magistrate order that specifically included factual findings for the magistrate's prior findings. However, as indicated, the Petitioner has not established that the 2016 magistrate order was issued in accordance with state law. Additionally, the 2016 order was issued by a magistrate and was not adopted as a final judgment by the juvenile court. The magistrate order, on its face, specifies that it would become a final, appealable order upon approval by the assigned judge. The record does not contain a subsequent final juvenile court order, adopting the magistrate order as a final judgment in the matter, as was the case with the Petitioner's 2014 custody order.

⁷ 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>.

⁸ See *id.*

⁹ See *id.*

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Consequently, we cannot rely on the factual findings in the 2016 magistrate order as the findings of the juvenile court.

The record, therefore, does not establish a reasonable factual basis for the juvenile court's best interest determinations. Accordingly, the consent of USCIS to a grant of SIJ classification in this case, 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, 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 Y-G-P-R-*, ID# 104081 (AAO Oct. 21, 2016)