



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

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

MATTER OF A-M-M-G-

DATE: SEPT. 12, 2016

MOTION ON ADMINISTRATIVE APPEALS 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 Field Office Director, Bloomington, Minneapolis, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition). The Director concluded that the probate court that granted guardianship and conservatorship of the Petitioner to P-C-<sup>1</sup> did not act as a juvenile court and therefore the Petitioner had not established that he obtained a juvenile court order as required by section 101(a)(27)(J)(i) of the Act. We dismissed the Petitioner's appeal and denied a subsequent motion to reconsider.

The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that a Minnesota appellate court has recently concluded that a probate court is authorized to make SIJ findings in a guardianship proceeding.

Upon review, we will grant the motion and sustain the appeal.

**I. APPLICABLE 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—

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<sup>1</sup> Name withheld to protect the individual's identity.

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- (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 U.S. 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>2</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, 376 (AAO 2010).

## II. ANALYSIS

The record reflects that the Petitioner was born in Mexico on [REDACTED]. The Petitioner claims that he entered the United States on or about February 10, 1998, without inspection, admission, or parole. On [REDACTED] 2012, the District Court, Probate Division, [REDACTED]

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<sup>2</sup> 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>.

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[REDACTED] (probate court) granted guardianship and conservatorship of the Petitioner to P-C-.

The Petitioner filed this SIJ petition on February 6, 2012. The Director determined that the probate court did not act as a juvenile court in the Petitioner's guardianship proceedings, and therefore, the Petitioner did not establish that he had obtained a juvenile court order as required by section 101(a)(27)(J)(i) of the Act. In our subsequent decisions, incorporated here by reference, we affirmed the Director's determination finding that the probate court made the requisite SIJ and guardianship determinations based on a finding that the Petitioner is an incapacitated person, and did not assert its jurisdiction over the Petitioner as a minor. Consequently, we concluded that the Petitioner had not demonstrated that his request for SIJ classification contained a custody or dependency order issued by a juvenile court, as required by section 101(a)(27)(J)(i) of the Act.

On motion to reopen and reconsider, the Petitioner asserts that the probate court had jurisdiction to make the SIJ determination. He submits an "Order Clarifying Jurisdiction" from the relevant probate court in which the court asserts that it did in fact have jurisdiction over the Petitioner as a minor when it issued its decision. The Petitioner also includes a recent unpublished decision from the Court of Appeals for the State of Minnesota involving a juvenile who sought an order of guardianship and an SIJ determination from the District Court. The District Court had granted the order of guardianship but declined to make the requested SIJ determination. The Appellate Court concluded that, "[g]iven the broad scope of the probate court's authority to act in the best interests of the [juvenile], . . . a probate court is authorized to make SIJ findings in guardianship proceeding." See *Guardianship of Jose Maria Chimborazo Guaman*, \_\_\_ N.W.2d \_\_\_ 2016 WL 2842936 at \*8 (Minn. Ct. App. 2016). Moreover, the Appellate Court determined that "because the record supports the appointment of a guardian and contains evidence as to each potential SIJ finding," the District Court "abused its discretion by declining to" make the requested SIJ determination. *Id.* at 9. Although the unpublished decision is not binding on the agency, the facts are sufficiently analogous to make it persuasive. Accordingly, based on the additional evidence provided on motion, the record establishes the probate court's jurisdiction over the Petitioner as a minor at the time it issued the custody and SIJ orders.

### 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 been met.

**ORDER:** The motion to reopen and reconsider is granted and the appeal is sustained

Cite as *A-M-M-G-*, ID# 17778 (AAO Sept. 12, 2016)