



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

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

MATTER OF R-S-

DATE: SEPT. 19, 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the juvenile court determination that parental reunification was not viable was deficient. The Director further determined U.S. Citizenship and Immigration Services' (USCIS) consent was not warranted because: (1) the record did not establish a reasonable factual basis for the court's non-viability determination and its determination that it was not in the Petitioner's best interest to be returned to the country of birth or last habitual residence; and (2) the record indicated that the Petitioner's request for SIJ classification was not *bona fide*.¹

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the record demonstrates his eligibility for SIJ classification.

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—

¹ As we are dismissing the Petitioner's appeal on the other stated grounds, we do not reach the issue of whether his request for SIJ classification is *bona fide*.

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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 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.²

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. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The record reflects that the Petitioner was born in India on [REDACTED] and he claims to have entered the United States on November 13, 2013, as a nonimmigrant visitor. On [REDACTED] 2014, when the Petitioner was [REDACTED] years old,³ the Family Court of the State of New York, [REDACTED]

² 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>.

³ The record indicates that the juvenile court assumed jurisdiction over the Petitioner as a minor until the age of 21 in accordance with New York state law. The guardianship order cited to section 661 of the New York Family Court Act,

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█ New York (juvenile court) issued an *Order Appointing Guardian of the Person*, awarding guardianship of the Petitioner to B-S,⁴ and an *Order-Special Juvenile Status* (court order), making specific findings related to the Petitioner's eligibility for SIJ classification.

III. ANALYSIS

Upon *de novo* review of the record, as supplemented on appeal, the Petitioner has not overcome the grounds for denial.

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

When adjudicating an SIJ petition, USCIS first 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 interests determination, as required by sections 101(a)(27)(J)(i) and (ii) of the Act. The juvenile court order here includes the requisite judicial determination that it was not in the Petitioner's best interest to be returned to India. However, the court's non-viability determination is deficient as it mirrors the statutory language that parental reunification was not viable due to "abuse, neglect, or abandonment," without specifying which of the three grounds under state law supported the determination, as required by the Act.

On appeal, the Petitioner does not specifically address the deficiency of the juvenile court order, and instead, contends that the deficiency was corrected by supplemental evidence considered by the juvenile court. However, as the Act explicitly defers findings on issues of child welfare under state law to the expertise and judgment of the juvenile court, our review of the sufficiency of the order is limited to determining only whether 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. Accordingly, we may not infer a non-viability determination by the juvenile court based on other evidence of record. As such, the juvenile court order here is deficient as it does not contain a non-viability determination that conforms to the requirements of the Act.

B. USCIS' Consent Is Not Warranted As There Is No Reasonable Factual Basis for the Requisite Judicial Determinations

As 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,

which defines the term "minor" for purposes of guardianship as including a person less than 21 years of age who consents to the appointment or continuation of a guardian after the age 18. The order further indicated that the Petitioner, who had already attained 18 years of age, consented to the appointment of a guardian.

⁴ We provide the initials of individual names throughout this decision to protect identities.

and not primarily to obtain immigrant status.⁵ In order to fulfill its consent function, USCIS requires a factual basis for a juvenile court's non-viability of parental reunification and best interest determinations.⁶ A juvenile court order that includes or is 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.⁷ The Director here found that USCIS' consent to a grant of SIJ classification was not warranted because the record did not establish a reasonable factual basis for the juvenile court's non-viability of parental reunification and best interest determinations. The Director further concluded that the record also disclosed inconsistent statements by the Petitioner that indicated that his request for SIJ classification was not *bona fide*.

Upon review, the present record does not establish a reasonable factual basis for the juvenile court's (deficient) non-viability determination and its best interest determination. As the Director's decision indicated, the juvenile court order here does not provide any factual findings in support of the court's best interest determination. Likewise, in rendering the non-viability determination, the court merely restated the language of the statute, providing that "[r]eunification with one or both of [the Petitioner's] parents is not viable due to: neglect; abandonment; and/or abuse," without making any findings of fact to clarify which of the three grounds provided the basis for the non-viability determination and to identify the parent to whom the non-viability determination applied.

On appeal, the Petitioner contends that the record demonstrates that his request for SIJ classification warrants USCIS consent. He contends that the deficiency of the juvenile court order was rectified by the submission of the underlying petition for guardianship and the notice of motion for special findings submitted to the court, which he maintains established factual bases to support the court's non-viability and best interest determinations. The Petitioner also submits on appeal a transcript of the hearing on the guardianship petition before the juvenile court that he contends demonstrates that his request for SIJ classification was *bona fide*.

Contrary to the Petitioner's assertions, the supplemental evidence the Petitioner submitted, including the notice of motion, the underlying guardianship petition by B-S-, the attorney affirmation, and a legal memorandum of law to the juvenile court, as well as a transcript of the guardianship hearing, does not establish a reasonable factual basis. Apart from the underlying petition and the transcript, the remaining documentation noted contains only assertions of facts by the Petitioner's counsel.⁸ Further, none of the documents identify the specific facts or evidence upon which the court relied in rendering its non-viability and best interest determinations. Although the court transcript indicates that the juvenile court credited the Petitioner's testimony, it also confirms that the court rendered its non-viability and best interest determinations without identifying the specific evidence or testimony

⁵ H.R. Rep. No. 105-405, at 130 (1997); *see also* Neufeld Memorandum, *supra*, at 3.

⁶ *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>.

⁷ *See id.*

⁸ *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) (The assertions of counsel do not constitute evidence).

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on which it relied. Consequently, the record does not clarify the specific ground(s) under state law on which the court made its non-viability determination, and it does not establish the facts on which the court based both the non-viability and the best interest determinations.

Upon *de novo* review, the record does not establish a reasonable factual basis for the requisite juvenile court determinations required under section 101(a)(27)(J)(i) and (ii) of the Act. Accordingly, the Petitioner has not established that his request for SIJ classification merits USCIS consent.

IV. 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 R-S-*, ID# 112926 (AAO Sept. 19, 2016)