



**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 U.S. Citizenship and Immigration Services' (USCIS) consent to a grant of SIJ status was not warranted because the record did not establish a reasonable factual basis for the court's non-viability determination, as well as its determination that it was not in the Petitioner's best interest to be returned to his country of birth or last habitual residence.

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—

- (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.<sup>1</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. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The record reflects that the Petitioner was born in India on [REDACTED] and entered the United States in July 2012 without inspection, admission, or parole. On [REDACTED] when the Petitioner was [REDACTED] years old,<sup>2</sup> the Family Court of the State of New York, [REDACTED] New York (juvenile court) issued an *Order Appointing Guardian of the Person*, awarding guardianship of the Petitioner to J-S-<sup>3</sup> Thereafter, on [REDACTED] 2015, the juvenile court issued an *Order-Special Juvenile*

<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, 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>.

<sup>2</sup> 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, which indicates that the Petitioner consented to the appointment of a guardian, cites to section 661 of the New York Family Court Act, 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.

<sup>3</sup> We provide the initials of individual names throughout this decision to protect identities.

*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, we withdraw in part the Director's decision insofar as it found that the record lacked a reasonable factual basis for the juvenile court's non-viability determination. However, as the record does not establish a reasonable factual basis for the juvenile court's best interest determination, the Petitioner has not overcome the remaining ground for denial.

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. Here, the juvenile court order includes the requisite judicial determinations that parental reunification was not viable due to abandonment by the Petitioner's parents and that it was not in the Petitioner's best interest to be returned to India.

After determining whether the juvenile court order includes the requisite findings, USCIS must then determine whether there is a sufficient factual basis for the juvenile court's determinations so it may fulfill its required consent function.<sup>4</sup> 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.<sup>5</sup> The Director found that the record did not establish a reasonable factual basis for the juvenile court's non-viability of parental reunification and best interest determinations.

On appeal, we concur with the Petitioner's contention that the record establishes a reasonable factual basis for the juvenile court's non-viability determination based on parental abandonment. The court order specifies that parental reunification was not viable based on the Petitioner's parents' admissions to abandonment and the fact that they made no efforts to support the Petitioner when he left India. Contrary to the Director's assertion below, the court transcript of the guardianship proceedings further identifies the factual basis for the court's non-viability determination. The transcript indicates that the juvenile court specifically accepted the Petitioner's parents' sworn notarized statements consenting to the guardianship, relied on the Petitioner's affidavit to the court in which he stated that his parents had kicked him out of the home, and concluded that there was sufficient basis for a finding of parental abandonment. The underlying guardianship petition, which the juvenile court specifically credited, asserts that the Petitioner's parents do not communicate with

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

<sup>5</sup> See *id.*

him and did not care for his well-being. On appeal, the Petitioner also submits the notarized statements of his parents. Based on all of the foregoing, the juvenile court specified the basis upon which it relied to render the SIJ finding “based on abandonment by the parents.” Accordingly, upon review, the record sufficiently demonstrates a reasonable factual basis for the juvenile court’s non-viability determination based on parental abandonment.

Nonetheless, the present record does not establish the Petitioner’s eligibility for SIJ classification, as it does not demonstrate a reasonable factual basis for the juvenile court’s best interest determination. Citing to USCIS guidance,<sup>6</sup> the Petitioner contends on appeal that USCIS had no jurisdiction to question the basis of the factual findings of the juvenile court, which were specifically delegated to the juvenile courts under the Act. He further asserts that given the juvenile court’s factual findings of parental abandonment, it is reasonable for the court to conclude that it was not in the Petitioner’s best interest to return to India. The Petitioner also maintains that he would be unfairly penalized for the juvenile court’s proper use of its discretion in utilizing its procedural preferences by not specifying the facts to support the best interest determination in the order.

As noted, court orders that contain or are supplemented by specific factual findings generally provide sufficient basis for the requisite judicial SIJ determinations. However, contrary to the Petitioner’s assertions, the juvenile court order here contains no factual findings to support the court’s best interest determination. Although we acknowledge the adverse impact on the Petitioner given that the juvenile court did not include the factual basis for its best interest determinations, we are without authority to infer from the record and make factual findings in the first instance to support such a determination, as the Petitioner advocates on appeal. USCIS is not the fact finder in regards to issues of dependency or custody, non-viability of reunification with one or both parents, and the best interest determination. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. Section 101(a)(27)(J)(i)-(ii) of the Act (referencing the determinations of a juvenile court or other administrative or judicial body). We, therefore, examine the relevant evidence only to ensure that the record contains a reasonable factual basis for the court’s order.<sup>7</sup> As discussed, the order here contains no factual findings by the juvenile court to serve as a basis for its determination that it was not in the Petitioner’s best interest to be returned to India. In fact, the court transcript confirms that the juvenile court did not specifically address the best interest determination or make any factual findings in support of the determination in its order. Additionally, although the record includes other supplemental evidence, including the notice of motion to the juvenile court, the underlying guardianship petition, and the Petitioner’s affidavit to the court, they too do not identify any specific facts or evidence upon which the court relied in rendering its best interest determination.

Consequently, the record does not establish a reasonable factual basis for the requisite juvenile court best interest determination required under section 101(a)(27)(J)(ii) of the Act. Accordingly, the Petitioner has not established that his request for SIJ classification merits USCIS consent.

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<sup>6</sup> *See id.*

<sup>7</sup> *See id.* at 4-5.

#### 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# 09867 (AAO Sept. 19, 2016)