



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

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

MATTER OF H-S-

DATE: SEPT. 21, 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: (1) the requisite juvenile court determination that parental reunification was not viable was deficient; and (2) 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 the country of birth or last habitual residence.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. 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

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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).

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The record reflects that the Petitioner was born in India on [REDACTED] and entered the United States on January 15, 2012, as a nonimmigrant visitor. On [REDACTED] 2015, when the Petitioner was [REDACTED] years old,² the Family Court of the State of New York, [REDACTED] New York (juvenile

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>.

² 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

court) issued an *Order Appointing Guardian of the Person*, awarding guardianship of the Petitioner to G-S,³ 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. Although 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, the 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 address and has not overcome this deficiency in the juvenile court order.

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

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 non-viability of parental reunification and best interest determinations so it may fulfill its required consent function.⁴ 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.⁵ The Director 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.

of a guardian after the age 18.

³ We provide the initials of individual names throughout this decision to protect identities.

⁴ 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>.

⁵ See *id.*

Citing to USCIS guidance,⁶ the Petitioner asserts generally that court orders that contain or are supplemented by specific factual findings generally provide sufficient basis and maintains that the Director erred in looking behind the court order here to conclude that the Petitioner's request for SIJ classification was not *bona fide*. Contrary to the Petitioner's assertions on appeal, the juvenile court order contains no factual findings to support the juvenile court's (deficient) non-viability determination and its best interest determination. The court order merely restates the language of the statute, and provides that "[r]eunification with one or both of [the Petitioner's] parents is not viable due to: neglect; abandonment; and/or abuse," without setting forth any factual findings by the court 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. Likewise, the court made no factual findings to support its best interest determination. Consequently, in such cases, USCIS properly reviews additional evidence to determine whether there is a reasonable factual basis for the court determination.⁷

The Petitioner contends that the Director improperly disregarded the supplemental evidence in the record, which he maintains the juvenile court considered in rendering its non-viability and best interest determinations. Notwithstanding the Petitioner's contentions, the Director considered the supplemental evidence, including the notice of motion, the underlying guardianship petition (executed by the attorney on behalf of the guardianship petitioner), an attorney affirmation, a legal memorandum of law to the juvenile court, and a home study investigation. However, apart from the underlying guardianship petition and the home study investigation, the remaining documentation 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.

Consequently, the record does not establish the specific ground(s) under state law on which the court's non-viability determination rested, and it does not demonstrate the facts on which the court based both the non-viability and the best interest determinations. The record, therefore, does not establish a reasonable factual basis for the requisite juvenile court determinations required under section 101(a)(27)(J)(i), (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.

⁶ *See id.*

⁷ *See id.* at 5.

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

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ORDER: The appeal is dismissed.

Cite as *Matter of H-S-*, ID# 112871 (AAO Sept. 21, 2016)