



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

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

MATTER OF O-T-A-

DATE: AUG. 16, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner was born in Mexico and entered the United States when he was 12 years old. When he was 17 years old, a juvenile court in Illinois appointed a guardian for the Petitioner and found that he could not reunify with his parents due to abandonment and neglect and that it was not in his best interest to return to Mexico. Based on this order, 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 of their parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the Chicago, Illinois Field Office denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition) and we dismissed the Petitioner's subsequent appeal. We determined that the record did not establish that the juvenile court had a reasonable factual basis for finding that reunification with one or both of the Petitioner's parents was not viable and that it was not in his best interest to return to Mexico.

On motion, the Petitioner submits a brief and additional evidence of his parents' identities and his mother's death. He asserts that the juvenile court made a qualifying finding that his reunification with his parents was not viable due to neglect and abandonment.

Upon review, we will deny the motion to reopen and motion to reconsider.

I. LAW

A motion to reopen is based on evidence of new facts. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Petitioner's submission on motion contains new evidence and assertions, but does not establish error in our prior decision. The motion does not demonstrate the Petitioner's eligibility for SIJ classification.

II. ANALYSIS

A. USCIS' Consent

In our decision on appeal, we concluded that the Petitioner did not submit sufficient evidence to establish the identities of his parents or the death of his mother, so the record did not show that the juvenile court had a reasonable factual basis for finding that reunification with one or both of his parents was not viable and that it was not in his best interest to return to Mexico. On motion, the Petitioner provides a brief and additional evidence regarding his parents' identities and his mother's death. The record establishes that the juvenile court had a reasonable factual basis for its determination of the identities of the Petitioner's parents and the death of his mother, which formed the basis for its finding that reunification with his parents was not viable due to neglect and abandonment. Therefore, the Petitioner has overcome this ground on motion. However, the Petitioner remains ineligible for SIJ classification.

B. No Qualifying Determination that Parental Reunification is Not Viable

In response to the Petitioner's motion, we initially issued a request for evidence (RFE), noting that the juvenile court's order lacks a qualifying determination that the Petitioner's "reunification with 1 or both of [his] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law," as Section 101(a)(27)(J)(i) of the Act requires. The determination regarding parental reunification must be made under state child welfare laws. 6 USCIS Policy Manual, J.2(D)(4), J.3(A)(2), <https://www.uscis.gov/policymanual>. The court order itself should establish that the determination was made under state law, and state court orders that only cite or paraphrase immigration law and regulations will not suffice. *Id.* at J.3(A)(2).

We noted in our RFE that, although the juvenile court found that the Petitioner could not reunify with his parents due to abandonment and/or neglect, the court did not cite any state law under which that determination was made. Also, the underlying Petition for Appointment of Guardian and affidavits that were submitted to the juvenile court do not cite relevant state law on abuse, neglect, or abandonment. We requested that the Petitioner submit evidence to show the relevant state law under which the court determined that he was abandoned and/or neglected, such as any relevant available court records.

In response to our RFE, the Petitioner submits a brief in which he contends that the juvenile court relied on Illinois law to make its determinations that he was abused and neglected and that it would not be in his best interest to return to Mexico, and that Illinois courts need not explicitly cite to state law in guardianship orders. He asserts that because the juvenile court had jurisdiction over him, the court's jurisdiction is limited to matters of state law, and there is no evidence that the court relied on anything other than state law, we can infer that the juvenile court relied on state law in issuing its order. Also, the Petitioner argues that the juvenile court order was validly issued under state law and USCIS lacks authority to instruct juvenile courts on how to apply their own state law.

In support of his assertions, the Petitioner submits a letter from the Director of the [REDACTED] at [REDACTED] who states that courts in [REDACTED] Illinois, do not cite state law on abuse, neglect, or abandonment in probate guardianship orders. She indicates that all probate divisions in [REDACTED] use a standard guardianship appointment order, which does not contain a citation to state law. The [REDACTED] letter focuses on the practice in [REDACTED] but the juvenile court order regarding guardianship of the Petitioner was issued by a court in [REDACTED]. The relevance of the information regarding [REDACTED] to this case is not clear. The Petitioner also submits a letter from a licensed attorney who states that, based on his experience practicing law in [REDACTED] he can attest that courts in that county do not cite to state law on abuse, abandonment, or neglect in guardianship orders. However, he indicates that the state law basis for such orders is clear because Illinois law does not permit a guardianship order to be entered if a parent “is ready, will[ing] and able to care for the child,” and many parents who are not “ready, willing, and able” have neglected, abused, or abandoned the child.

We do not question the juvenile court’s jurisdiction over the Petitioner or its authority to issue a guardianship order in his case. However, section 101(a)(27)(J)(i) of the Act requires that a juvenile court have found that reunification with one or both of a petitioner’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. *See* 6 USCIS Policy Manual, *supra*, at J.2(D)(2) (stating that the juvenile court must make this requisite finding). Here, the juvenile court’s order does not specify the Illinois law under which it found that the Petitioner was neglected and abandoned. The underlying petition and documents submitted to the juvenile court also do not establish the state law that formed the basis for the finding, and the Petitioner does not indicate on appeal which state law applied. Because the order and supporting evidence contain no reference to any state law under which the reunification determination was made, the order lacks a qualifying determination that parental reunification is not viable, as section 101 (a)(27)(J)(i) of the Act requires.

III. CONCLUSION

The juvenile court’s order does not contain a qualifying determination that parental reunification is not viable due to abuse, neglect, abandonment, or a similar basis under state law. Consequently, the Petitioner is ineligible for SIJ classification.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of O-T-A-*, ID# 00214172 (AAO Aug. 16, 2017)