



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

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

MATTER OF M-A-A-R-

DATE: NOV. 15, 2017

APPEAL OF ST. LOUIS, MISSOURI FIELD OFFICE DECISION

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

The Petitioner was born in Honduras and entered the United States when he was [redacted] years old. When the Petitioner was [redacted] years old, a circuit court in Missouri found that the Petitioner had been abused, neglected, and abandoned by his father, and granted the Petitioner's mother custody of him. Based on the state court 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 parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the St. Louis, Missouri, Field Office denied the petition. The Director determined that circuit court's SIJ order was not, as required, issued by a juvenile court making a care and custody determination.

On appeal, the Petitioner submits additional evidence and asserts that the circuit court maintained jurisdiction over him at the time it issued its orders.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners must show that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that the petitioners cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon a juvenile court or the juvenile court must have placed the petitioners in the custody of a state agency or a guardian appointed by the state or the juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii). Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

U.S. Citizenship and Immigration Services (USCIS) must also consent to the grant of SIJ classification. *Id.* at section 101(a)(27)(J)(iii). USCIS' consent is an acknowledgment that the request for SIJ classification is *bona fide*, which means that the juvenile court order and best-interest determination were sought to gain relief from abuse, abandonment, neglect, or a similar basis under state law and not primarily or solely to obtain an immigration benefit. 6 USCIS Policy Manual J.2(D)(5), <https://www.uscis.gov/policymanual>.

USCIS is not the fact finder in regards to issues of child welfare under state laws and relies upon the expertise of the juvenile court; USCIS reviews the juvenile court order only to ensure it contains the requisite dependency or custodial placement and includes or is supplemented by the factual basis for the order. 6 USCIS Policy Manual, *supra*, at J.3(A)(3). While template orders that merely recite the Act and regulations will not suffice, juvenile court orders that contain or are supplemented by judicial findings of fact are generally sufficient to establish a reasonable basis for the juvenile court's order and the judicial or administrative best-interest determination. *Id.* Where the juvenile court order does not contain such findings of fact, USCIS may consider, for example, the underlying petition for dependency or custody, records from the juvenile court proceedings, any supporting documents submitted to the juvenile court, affidavits summarizing such evidence, or affidavits and records consistent with the court's findings. *Id.* The evidence must confirm that the juvenile court made an informed decision. *Id.* at J.2(D)(5).

II. ANALYSIS

The Petitioner was born in Honduras in [REDACTED] and entered the United States without admission, parole, or inspection in March 2015. In [REDACTED] 2016, the Circuit Court of the [REDACTED] State of Missouri, issued an *Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status* (SIJ order), containing specific findings related to the Petitioner's eligibility for SIJ classification; including a determination that reunification with the Petitioner's father was not viable due to past abuse and current neglect and abandonment. The court also issued a *Paternity Judgment* awarding custody of the Petitioner to his mother.

A. Petitioner Not Subject to a Juvenile Court Order

The Petitioner's SIJ order is deficient because he has not established that the order was issued by a juvenile court, as required under section 101(a)(27)(J)(i) of the Act. A juvenile court is defined as a court "having jurisdiction under state law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). Though the specific title and type of court may vary from state to state, the record must establish that the court exercised jurisdiction over a petitioner as a juvenile under the applicable state law. *See* 8 C.F.R. § 204.11(a), (c)(3) (jurisdiction and dependency declaration must be under state law); *see also* 6 USCIS Policy Manual at J.2(D)(4), J.3(A)(1) (reiterating the requirement that juvenile courts have jurisdiction over SIJ petitioners under state law and providing examples of state courts that may qualify as juvenile courts for SIJ purposes). State law is therefore controlling on the definition of a juvenile or child within the state's child welfare provisions. *Id.*

Matter of M-A-A-R-

Missouri circuit courts are courts of original and general jurisdiction and may act as juvenile courts in some instances, including over child custody matters arising in dissolution of marriage and divorce proceedings under Chapter 452 of the Missouri Revised Statutes. *See* Mo. Const. Art. 5, § 14 (original jurisdiction of Missouri circuit courts over all cases and matters, civil and criminal); Mo. Rev. Stat. § 478.070 (same); Mo. Rev. Stat. § 452.420 (Chapter 452 proceedings to be heard by circuit court judge with certain exceptions). For purposes of child custody proceedings pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act under Chapter 452 of the Missouri Revised Statutes, a child is defined as “an individual who has not attained eighteen years of age.” Mo. Rev. Stat. § 452.705.

The circuit court awarded legal and physical custody of the Petitioner to his mother in the paternity judgment order. However, as the Petitioner was already [redacted] years of age at the time, he did not meet the definition of child under the applicable state law and the paternity judgment order erroneously listed the Petitioner’s age as [redacted] rather than [redacted].

The circuit court SIJ order also indicated that the Petitioner remained under its jurisdiction as he continued to attend high school and had not been emancipated. However, the court did not cite to any statutory or legal authority under Missouri law under which it assumed jurisdiction over the Petitioner as a child after his eighteenth birthday. Consequently, the record does not establish that the circuit court had jurisdiction over the Petitioner as a juvenile under state law when it issued the order.

On appeal, the Petitioner contends that pursuant to section 452.310(3) of the Missouri Revised Statutes, he became subject to the jurisdiction of the court immediately upon the filing of the petition in proceedings for dissolution of marriage, because he was under [redacted] years of age and a child as defined by state law at the time. Further, citing state law authorizing Missouri courts to make findings regarding parenting plans and child support for children over 18 years of age, the Petitioner asserts that the circuit court’s jurisdiction over him continued even after his 18th birthday to issue his custody and SIJ orders. *See* Mo. Rev. Stat. §§ 452.310(11), 452.340(5) (addressing parenting plans and child support issues for children over the age of 18).

We do not dispute the circuit court’s authority to exercise jurisdiction over the Petitioner under state law after he attained [redacted] years of age for the purpose of a child support or a parenting plan. However, we must determine whether the court’s exercise of such jurisdiction over the Petitioner was as a *juvenile* court for purposes of SIJ classification. First, contrary to the Petitioner’s assertion, the circuit court’s initial exercise of jurisdiction over him when he was [redacted] years of age is not sufficient by itself to establish that the court exercised jurisdiction over him as a juvenile at the age of eighteen, when it issued the SIJ order, and the Petitioner does not cite relevant statute or law stating otherwise.

As stated, a juvenile court must have authority to determine both the custody *and* care of juveniles under state law. 8 C.F.R. § 204.11(a); *see also* 6 USCIS Policy Manual at J.2(D)(4) (stating that a qualifying juvenile court order must be issued under state law and that the court must follow its state laws on jurisdiction). The Petitioner cites Missouri law concerning a circuit court’s jurisdiction over

an individual after his or her eighteenth birthday for the care of juveniles, to order parenting plans and child support, but not for determinations of court-ordered juvenile dependency or custody upon attaining █ years of age. Consequently, the Petitioner has not demonstrated that the court had jurisdiction over him as a juvenile when he was █ years of age, as he has not established that the court had the authority to make juvenile custody determinations under state law at that time. Though the court made a custody determination concerning the Petitioner when he was █ years old, the record does not establish the law under which the circuit court exercised jurisdiction over the Petitioner as a juvenile. *See* 6 USCIS Policy Manual at J.2(D)(4). Overall, the record does not establish the court's jurisdiction over the Petitioner as a juvenile court in issuing SIJ and custody orders when the Petitioner was █ years old.

B. Viability of Parental Reunification Finding under State Law

The Act requires that the juvenile court determine that an SIJ petitioner's "reunification with one or both . . . parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." Section 101(a)(27)(J)(i) of the Act. The plain language of the statute indicates that state law governs the determination that parental reunification is not viable. *See* 6 USCIS Policy Manual, *supra*, at J.2(D), (D)(2), (4), J.3(A)(2) (stating that non-viability determinations must be made under state child welfare laws). The juvenile court order itself should establish that these requisite findings were made under state law, and orders that only cite or paraphrase immigration law and regulations will not suffice. *Id.* at J.2(D)(4), J.3(A)(2).

The Petitioner's SIJ order states that reunification with his father is not viable due to past abuse and current abandonment and neglect. However, the SIJ order does not cite to the state statutes under which the parental reunification determination was made. The record also does not contain any other documents underlying the SIJ order that reference the applicable state law. As the record does not contain the state law under which the parental reunification determination was made, the SIJ order is also deficient under section 101(a)(27)(J)(i) of the Act on this basis.¹

C. No Reasonable Factual Basis for Best Interest Determination

As stated, USCIS must consent to a grant of SIJ classification. In determining whether consent is warranted, USCIS reviews SIJ orders and the relevant record to determine whether the court's best interest determination findings are supported by a reasonable factual basis. *See* section 101(a)(27)(J)(iii) of the Act; 6 USCIS Policy Manual at J.2(D)(5).

¹ The Petitioner also asserts that USCIS did not conform to its procedures, as his SIJ petition was not adjudicated within 180 days and he was not issued a request for evidence (RFE) or notice of intent to deny (NOID) prior to the Director's denial. As a remedy, the Petitioner requests the opportunity to address the Director's concerns. The USCIS Policy Manual specifies that SIJ petitions are *generally* adjudicated within 180 days, but does not impose this requirement upon adjudicators. *See* 6 USCIS Policy Manual at J.4(B). And, though RFEs and NOIDs are *generally* issued where evidence is not sufficient, again, this practice is not required within USCIS. *Id.* at J.4(D). Furthermore, the Petitioner has had the opportunity on appeal to present any other relevant evidence and address the Director's concerns.

The Petitioner's SIJ order states that it is in his best interest to remain in the United States, as he is enrolled in school, living safely under the care of his mother, and is afraid to have further contact with his father. However, "a court's finding that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that a placement in the petitioner's country of nationality would not be in the child's best interest." USCIS Policy Manual at J.2(D)(3). Accordingly, though the family court made a determination concerning the Petitioner's best custodial placement, the record does not contain a reasonable factual basis to support a finding that the court engaged in a determination concerning whether placement in his country of nationality, Honduras, would be in the Petitioner's best interest. *Id.* As the record does not contain a reasonable factual basis for the court's best interest determination, the Petitioner has not demonstrated that he warrants USCIS consent for SIJ classification.

III. CONCLUSION

The Petitioner has not overcome the basis of the Director's denial and established that he was subject to a juvenile court order. The Petitioner's SIJ order also does not cite to the state statute under which his viability of parental reunification finding was made, and the record does not contain a reasonable factual basis for the court's best interest determination, as required.

ORDER: The appeal is dismissed.

Cite as *Matter of M-A-A-R-*, ID# 626904 (AAO Nov. 15, 2017)