



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

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

MATTER OF W-M-M-M-

DATE: FEB. 2, 2018

APPEAL OF SAN ANTONIO, TEXAS FIELD 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 she was four years old. When she was 17 years old, a juvenile court in Texas issued an "Order of Petition to Adjudicate Parentage and Motion for Dependency." In the order, the juvenile court found that the Petitioner's presumed father is not her biological father, her biological father is unknown, it would not be in her best interest for the parental rights of her unknown father to be terminated, and the parental rights of her unknown father would not be addressed until he submitted to the court's jurisdiction. Additionally, the juvenile court found that the Petitioner's reunification with her parents would not be viable due to abuse, neglect, and abandonment as defined under Texas law, and that it would not be in her 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 San Antonio, Texas Field Office denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition). The Director withheld U.S. Citizenship and Immigration Services' (USCIS) consent to the Petitioner's SIJ classification based on a finding that her request was not *bona fide*.

On appeal, the Petitioner submits a brief and additional evidence and asserts that the Director's decision was in error.

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

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years of age, and has been subject to a state juvenile court order determining that the petitioner cannot reunify with one or both 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). A petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the

petitioner 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 the petitioner's best interest to return to his or her or his or her parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii).

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>. 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).

II. ANALYSIS

The Petitioner was born in Mexico in 1998 and entered the United States in March 2003, at the age of four years old, without inspection, admission, or parole. Affidavits in the record indicate that the Petitioner's adoptive¹ father and mother began providing financial support for the Petitioner in November 2000, when she was two years old,² after meeting her in Mexico and observing that she had been abandoned by her biological parents and was being neglected by her caretakers. Following approximately two years of frequent visits to the Petitioner in Mexico and sending money to her caretakers on her behalf, her adoptive parents brought her to the United States after her biological mother briefly reappeared to tell them they "could have her because there was no one else willing to care for her." The Petitioner remained in the United States since that time and was raised by her adoptive parents. In 2004, her adoptive parents registered her birth in Mexico, obtaining a birth certificate that listed them as her parents and did not indicate that she was adopted.

In 2014, the Petitioner filed a Form I-821D, Consideration of Deferred Action for Childhood Arrivals (DACA application), with which she submitted her Mexican birth certificate listing her adoptive parents as her parents. She also submitted school records listing them as her parents. The DACA application was approved in [REDACTED] 2014. In [REDACTED] 2015, an "Original Petition to Adjudicate Parentage and Motion for Dependency" (original petition) was filed on the Petitioner's behalf before the juvenile court, indicating that the purpose of the petition was "to establish the parent-child relationship between the [Petitioner] and her UNKNOWN biological father," and requesting appointment of the Petitioner's adoptive mother as her conservator and findings relating to her eligibility for SIJ classification. In [REDACTED] 2016, when the Petitioner was 17 years old, the

¹ The Petitioner's adoptive parents did not legally adopt her, but brought her from Mexico when she was a toddler in the absence of care by her biological parents and have fulfilled the role of her parents since then. We will refer to them as her adoptive parents for clarity in this decision.

² The Petitioner's adoptive father asserted in his personal affidavit to the juvenile court that he met the Petitioner when she was one year old. However, the Petitioner's date of birth is [REDACTED] 1998, and he claims he first met her in November 2000, which was just after her second birthday.

juvenile court issued its order. It declared the Petitioner dependent on the court and found that her adoptive father was not her biological father, it would not be in the Petitioner's best interest to terminate her biological father's parental rights, and her biological father's parental rights would "not be addressed until he submits to the jurisdiction of this court and complies with any orders, including submission to DNA testing." The juvenile court also determined that the Petitioner was "subjected to parental abandonment, abuse and neglect as defined under [the] Texas Family Code"; reunification with her parents was not viable due to that abandonment, abuse, and neglect; and it was not in her best interest to be returned to Mexico.

A. USCIS' Consent

The Director withheld USCIS' consent to the Petitioner's SIJ classification based on a finding that her request was not *bona fide*. The record does not show that USCIS' consent to the Petitioner's SIJ classification is warranted, as section 101(a)(27)(J)(iii) of the Act requires.

In order to exercise our consent function, we must determine that the juvenile court order or supporting evidence provides a reasonable factual basis for the court's findings. 6 USCIS Policy Manual, *supra*, at J.2(D)(5). We generally defer to juvenile courts on matters of state child welfare law and we do not reweigh the evidence to determine whether a child was subjected to abuse, neglect, abandonment, or a similar basis under state law. *Id.* at J.2(A), J.2(D)(5). 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 court's order and the judicial or administrative best-interest determination. *Id.* at J.3(A).

The Director found that the Petitioner did not establish that she sought the juvenile court order 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, *supra*, at J.2(D)(5). The Director explained that the Petitioner previously claimed in her DACA application that her adoptive parents were her biological parents, and submitted school records listing them as her parents. Although the Director acknowledged that the juvenile court found that the Petitioner's adoptive father was not her biological father, the Director concluded the court order lacked a reasonable factual basis underlying that determination. The Director determined that because the Petitioner was "well cared for by two adults, whom [she has] asserted are [her] parents for all intents and purposes," the evidence showed that she sought the juvenile court order solely for immigration purposes.

On appeal, the Petitioner argues that the juvenile court's determination regarding the identity of her biological father was based on personal affidavits from her adoptive parents, which established a reasonable factual basis for the court's findings on that issue. She therefore asserts that the Director improperly looked behind the court order to readjudicate the evidence before the juvenile court. We agree. The record shows that the juvenile court based its decision regarding the identity of the Petitioner's biological father on the original petition and affidavits from the Petitioner's adoptive parents, and there is no evidence that the juvenile court made an uninformed decision. Additionally, the Petitioner submits on appeal a DNA test report which conclusively shows that the Petitioner's

adoptive father is not her biological father. The record contains a reasonable factual basis for the court's finding regarding the paternity of the Petitioner.

Nevertheless, the evidence does not establish that the Petitioner sought the juvenile court order in order to obtain protection from abuse, neglect, or abandonment, rather than primarily for immigration purposes. On appeal, the Petitioner asserts that there was a "non-immigration purpose" for the proceeding before the juvenile court. She states that "establishing the biological father's lack of custodial rights was the primary purpose of the suit, and was in the best interest of the child" because a biological father has standing to bring a paternity suit under the Texas Family Code "only if the child he claims has no presumed father." However, the juvenile court order does not indicate that the court established "the biological father's lack of custodial rights"; to the contrary, the court found that terminating the biological father's parental rights was not in the Petitioner's best interest, and that her biological father's parental rights would not be addressed further until he came under the jurisdiction of the juvenile court. Furthermore, the original petition does not contain a request that the court determine the Petitioner's biological father's "lack of custodial rights," but instead states that the "purpose of this suit is to establish the parent-child relationship between the [Petitioner] and her UNKNOWN biological father," because she "recently learned her presumed father is not her biological father, and she seeks to determine the identity of her biological and legal father." The original petition did make a general request for "appropriate orders . . . for child support, medical support, access to the child, and the allocation of the rights and duties of the conservators once this Court adjudicates parentage and determines the best interest of [the] child," but did not specifically request a custody or guardianship determination or any other finding relating to the Petitioner's care and custody, and the juvenile court did not make such a finding.

The Petitioner also asserts in her brief on appeal that because her birth certificate listing her adoptive parents "would be legally invalid for most purposes," it was likely to be challenged eventually. She states that the juvenile court order established a conservatorship and placed the Petitioner under the continuing jurisdiction of the juvenile court, so that any future litigation would occur there. The juvenile court order did not specifically address the validity of the Petitioner's birth certificate. Even if clarification on this point was one reason the Petitioner sought the juvenile court order, the evidence does not support a finding that her primary purpose was to gain protection from abuse, neglect, or abandonment, rather than for immigration purposes. 6 USCIS Policy Manual, *supra*, at J.2(D)(5).

The Petitioner also argues on appeal that the Director violated her due process rights by basing the denial of her SIJ petition on information in her DACA application without first notifying her of that derogatory information and allowing her an opportunity to respond. The regulation at 8 C.F.R. § 103.2(b)(16)(i) states, in pertinent part, "If the decision will be adverse . . . and is based on derogatory information . . . of which the applicant . . . is unaware, he/she will be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered" The Director met the information disclosure requirements at 8 C.F.R. § 103.2(b)(16)(i) because the Petitioner is not "unaware" of the evidence she submitted with her DACA application. Furthermore, the Petitioner has had the opportunity to rebut the

evidence regarding her DACA application on appeal. Counsel states in the brief on appeal that the Petitioner “never had reason to question her birth certificate” or the identity of her parents until she filed her DACA application, and that the filing of that application prompted her adoptive parents to tell her she was abandoned and neglected by her biological parents. The Petitioner does not submit a personal statement containing the same claims, and assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Nevertheless, the petition to the juvenile court demonstrates that the Petitioner “recently learned her presumed father is not her biological father, and she seeks to determine the identity of her biological and legal father.” Therefore, we recognize that information the Petitioner obtained caused her to seek clarification regarding her biological parents. Regardless, our determination that her SIJ petition does not merit USCIS’ consent is not based on the evidence in her DACA application, but in the fact that she has not demonstrated that she sought the juvenile court’s order for protection from abuse, neglect, or abandonment, rather than primarily for immigration purposes, as section 101(a)(27)(J)(iii) of the Act requires.

B. The Order Lacks a Qualifying Determination that Parental Reunification is Not Viable

Additionally, although not raised by the Director, the family court’s order lacks a qualifying determination that the Petitioner’s “reunification with 1 or both of [her] 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, *supra*, at J.2(D)(4), J.3(A)(2). 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). Also, the court order should specify with which parent(s) the petitioner cannot reunify, and which ground applies: abuse, neglect, abandonment, or a similar basis under state law. 6 USCIS Policy Manual, *supra*, at J.3(A)(4).

In its order, the juvenile court found that the Petitioner “has been subjected to parental abandonment, abuse and neglect as defined under Texas Family Code §261.001(A)-(C), and (4) . . .” and that “[r]eunification with the child’s parents is not viable due to abandonment, abuse and neglect.” The juvenile court did not specify the parent or parents with whom the Petitioner could not reunify. Although the juvenile court found that the Petitioner’s adoptive father “is not her father” and that the identity of her biological father is unknown, the court did not clarify who qualified as a “parent” for purposes of the reunification finding. Furthermore, the court did not address the identity of the Petitioner’s adoptive or biological mother or indicate whether the reunification finding applied to either or both. Because the juvenile court did not specify with which parent(s) the Petitioner could not reunify, it did not make a qualifying reunification finding, as section 101(a)(27)(J)(i) of the Act requires. 6 USCIS Policy Manual, *supra*, at J.3(A)(4).

C. The Order Lacks a Qualifying Declaration of Dependency or Placement of Custody

Furthermore, although not addressed by the Director, the juvenile court's order lacks a qualifying declaration of dependency or placement of child custody. An SIJ must be declared dependent upon a juvenile court, or be legally committed to, or placed under the custody of a state agency or department, or of an individual or entity appointed by a state or juvenile court. Section 101(a)(27)(J)(i) of the Act. A juvenile court's dependency declaration must be made in accordance with state law governing such declarations. 8 C.F.R. § 204.11(c)(3). The juvenile court should use language establishing that the determination was made under state law. 6 USCIS Policy Manual, *supra*, at J.3(A)(2). The order should not simply mirror or cite to immigration law and regulations. *Id.* Here, the amended order briefly states that the Petitioner "has been declared dependent on this Court," but does not reference any state law on juvenile dependency under which the family court's determination was made. Consequently, the order lacks a qualifying dependency declaration under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(3).

III. CONCLUSION

USCIS' consent to the Petitioner's SIJ classification is not warranted. Also, the juvenile court's order lacks a qualifying determination that parental reunification is not viable and a qualifying declaration of dependency or placement of child custody. Consequently, the Petitioner is ineligible for SIJ classification.

ORDER: The appeal is dismissed.

Cite as *Matter of W-M-M-M-*, ID# 00642316 (AAO Feb. 2, 2018)