



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

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

MATTER OF J-E-B-J-

DATE: NOV. 1, 2018

APPEAL OF HOUSTON, TEXAS 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) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the Houston, Texas, Field Office (the Director) revoked approval of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the Petitioner did not warrant U.S. Citizenship and Immigration Services' (USCIS) consent to SIJ classification because the record does not establish: that a Texas juvenile court made a qualifying determination that reunification between the Petitioner and one or both of his parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; or that the juvenile court had a reasonable factual basis for its determinations. On appeal, the Petitioner submits additional evidence and a brief in which he reasserts his eligibility for SIJ classification. Upon *de novo* review of the entire record, 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 old, 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). The 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 an individual or entity 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).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act. The petitioner bears the burden of proof to demonstrate his or her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

“The Secretary of Homeland Security may, at any time, for what [s]he deems to be good and sufficient cause, revoke the approval of any petition approved by h[er] under section 204. Such revocation shall be effective as of the date of approval of any such petition.” Section 205 of the Act. *See also* 8 C.F.R. § 205.2 (explaining the revocation process).

II. ANALYSIS

In 2016, when the Petitioner was 14 years old, the [REDACTED] District Court of [REDACTED], Texas, issued an *Order in Suit Affecting Parent-Child Relationship* (SAPCR order), which declares, in relevant part, that

The Court finds that the children are dependent upon the Court as this Court has jurisdiction over the custody and care of the Children.

The Court finds that the children [*sic*] reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.

The Court finds that it is not in the children’s best interest to be returned to Guatemala, their country of nationality and their last habitual residence. If the children are sent back to Guatemala, they will have no home or caregiver to return to. Allowing the Children to remain in this country will help salvage what is left of their childhood and help them to live a productive life.

While we do not dispute the unfortunate facts that led to the above-listed determinations, the Petitioner does not warrant USCIS’ consent to SIJ classification because neither the SAPCR order, nor other record evidence, establish the Petitioner’s eligibility for SIJ classification under the Act.

A. The Director Had “Good and Sufficient Cause” for Revocation.

Prior to revoking approval of the Petitioner’s request for SIJ classification, the Director issued an 11-page notice of intent to revoke (NOIR), which explains that the Director further reviewed the Petitioner’s request for SIJ classification and found “good and sufficient cause” for revocation pursuant to section 205 of the Act. The Petitioner had 33 days from the date of the NOIR to submit a response, but the Petitioner did not do so. In the revocation notice, the Director noted the Petitioner’s lack of a response to the NOIR, but, on appeal, the Petitioner does not address his failure to submit a response. Instead, the Petitioner contends that, pursuant to non-binding Ninth Circuit case law, USCIS must produce “substantial evidence supporting its determination[] that a petition should be revoked.” *See Tongatapu Woodcraft Hawaii, Ltd. V. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (“It seems clear, then, that the Service retains at least the burden of producing substantial evidence supporting its determination.”). Further, the Petitioner claims that

“the Director failed to present any evidence supporting a determination that the petition should be revoked for good and sufficient cause.”

As explained above, the Director issued an 11-page decision, which provides the grounds and supporting laws, regulations, and policies for the revocation. Although the Ninth Circuit may have interpreted a substantial evidence burden to the “good and sufficient cause” standard for revocation, that interpretation is not binding in the Fifth Circuit, where the Petitioner’s case arises. On the other hand, the First Circuit, which is also non-binding, but persuasive, has found “that what constitutes ‘good and sufficient cause’ is within the Secretary’s discretion.” *Bernardo ex rel. M & K Engineering, Inc. v. Johnson*, 814 F.3d 481, 486 (1st Cir. 2016). In reaching that conclusion, the First Circuit relied on the use of “‘may,’ ‘at any time,’ and ‘for what [s]he deems to be good and sufficient cause[.]’” as evidence that “Congress indicated its intent to make [the decision] discretionary[.]” *Id.* at 485–86. We find that the “good and sufficient cause” standard is discretionary, and, as the Petitioner is ineligible for SIJ status for the reasons described below, the Director acted within his discretion in revoking approval of the Petitioner’s request for SIJ classification.

B. The [REDACTED] District Court Acted as a “Juvenile Court” for SIJ Purposes.

The Director revoked approval of the Petitioner’s request for SIJ classification, in part, because he found that the SAPCR order was not issued by a juvenile court with jurisdiction over the Petitioner’s custody and care. As support for that finding, the Director explained that the court that issued the SAPCR order is not dedicated to juvenile matters. *See* Tex. Gov. Code § 24.456 (explaining that this court’s district “is composed of [REDACTED] and this district “shall give preference to family law matters”). On appeal, the Petitioner explains that “district courts have concurrent jurisdiction over matters involving the custody and care of juveniles” and those district courts “ha[ve] general jurisdiction unless such jurisdiction is limited by the exclusive jurisdiction of another court.” While there is a family district court in [REDACTED], *see* Tex. Gov. Code § 24.625 (explaining that the 317th Judicial District, as a family district court, encompasses [REDACTED], which has “primary responsibility for cases involving family law matters[.]” *see* Tex. Gov. Code § 24.601(c) (explaining the jurisdiction of family district courts), that family district court’s jurisdiction “does not limit the jurisdiction of other district courts nor relieve them of responsibility for handling cases involving family law matters[.]” *see id.* (same). As the [REDACTED] District Court has jurisdiction over “family law matters[.]” Tex. Gov. Code § 24.456; “family law matters” include “child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency[.]” Tex. Gov. Code § 24.601; and the Petitioner was under 18 years old at the time that the SAPCR order was issued, *see* Tex. Fam. Code § 101.003 (defining “child” or “minor” as under 18 years old except “[i]n the context of child support”); we find that the [REDACTED] District Court is a juvenile court for SIJ purposes. Therefore, the Petitioner has overcome this ground for revocation on appeal.

C. The Petitioner Does Not Warrant USCIS' Consent to SIJ Classification.

SIJ classification may only be granted upon USCIS' consent when a petitioner is otherwise eligible. Section 101(a)(27)(J)(iii) of the Act; 6 USCIS Policy Manual J.2(D)(5), <https://www.uscis.gov/policymanual>. In determining whether consent is warranted, USCIS reviews juvenile court orders and the relevant record to determine whether the juvenile court's parental reunification and best interest determinations are supported by a reasonable factual basis. *See* 6 USCIS Policy Manual, *supra*, at J.2(D)(5). USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if a petitioner was subjected to abuse, neglect, abandonment, or a similar basis under state law; USCIS reviews the juvenile court order only to ensure that it contains the requisite dependency or custodial placement and includes, or is supplemented by, the factual basis for the order. *Id.* 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 factual 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.*

In consenting to a grant of SIJ classification, USCIS' consent determination is an acknowledgment 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 similar mistreatment under state law, and not primarily, or solely, to obtain an immigration benefit. *See* H.R. Rep. No. 105-405, 130 (1997) (explaining that the primary purpose must be to obtain relief from certain mistreatment rather than to obtain immigrant status); *see also* 6 USCIS Policy Manual, *supra*, at J.2(D)(5), J.3(A)(3) (explaining that the court ordered dependency or custodial placement of the child is the relief being sought from the juvenile court).

1. The Record Establishes a Reasonable Factual Basis for the Juvenile Court's Determinations.

The Director found that the record did not establish a reasonable factual basis for the juvenile court's parental reunification and best interest determinations. On appeal, the Petitioner argues that Texas law prohibits the inclusion of factual findings in final judgments; however, this prong of our consent function does not require that the reasonable factual basis appear in the juvenile court order. *See* 6 USCIS Policy Manual, *supra*, at J.3(A)(3) (listing examples of documents that a petitioner may submit to support a reasonable factual basis). Although the SAPCR order lacks a reasonable factual basis for the determination that reunification between the Petitioner and one or both of his parents is not viable, the hearing transcript that the Petitioner submits on appeal shows that the Petitioner's mother testified that the Petitioner's father abused her in front of the Petitioner and his siblings, did not allow her to work to support the Petitioner and his siblings, and did not provide financially for the Petitioner and his siblings. While the record lacks a qualifying parental reunification determination, *see infra* Part II(D), we find that the testimony in the hearing transcript

could support a reasonable factual basis if the record otherwise established a qualifying determination.

The Director also found that the record lacks a reasonable factual basis for the determination that it would not be in the Petitioner's best interest to be returned to Guatemala. Specifically, the Director found that the language in the SAPCR order explaining that the Petitioner would not have a home or caregiver if he were to return to Guatemala is insufficient because the Petitioner did not submit objective evidence to support that explanation. USCIS does not require that a petitioner submit specific documents to establish the factual basis for any of the juvenile court's determinations. *See* 6 USCIS Policy Manual, *supra*, at J.3(A)(3). Rather, orders that have the necessary findings or rulings and include, or are supplemented by, the factual basis for the court's findings (for example, the judicial findings of fact) are usually sufficient to establish eligibility. *Id.* Given that the SAPCR order states that the Petitioner would not have an available caregiver if he were to return to Guatemala, the SAPCR order establishes a reasonable factual basis for the juvenile court's best interest determination. *See* 6 USCIS Policy Manual, *supra*, at J.2(D)(3), J.3(A)(4) (explaining that a request for SIJ classification should provide evidence that the juvenile court considered placement in that country). Therefore, the Petitioner has also overcome this ground of the revocation.

2. The Record Establishes that the Juvenile Court Made an Informed Decision.

The Director further found that the record called into question whether the juvenile court made an informed decision because of: the lack of a reasonable factual basis for the juvenile court's determinations, the lack of specificity in the parental reunification determination, *see infra* Part II(D), the lack of objective evidence of the Petitioner's father's paternity, the Petitioner's father's appointment as the Petitioner's possessory conservator, and the Petitioner's father's continued residence in Guatemala. As discussed above, the record establishes a reasonable factual basis for the juvenile court's determinations. Although the juvenile court appointed the Petitioner's father as his possessory conservator, the hearing transcript shows that the juvenile court only did so following the Petitioner's mother's testimony concerning the Petitioner's father's mistreatment of the Petitioner. In addition, while the record must show the specific parent(s) with whom reunification is not viable and the basis(es) for that determination, a lack of specificity, by itself, also does not establish a lack of an informed decision. Therefore, the Petitioner has established by a preponderance of the evidence that the juvenile court made an informed decision.

The Petitioner also submits his father's waiver of citation, in which the Petitioner's father attests to his paternity. The Director noted that the record lacked that document or any other evidence concerning the Petitioner's father's paternity; however, the Petitioner was not required to submit such evidence because the SAPCR order lists the Petitioner's father's name, and the Petitioner submitted below his birth certificate, which also lists his father's name. Ultimately, the preponderance of the evidence does not indicate that the Petitioner sought the family court orders primarily, or solely, to obtain an immigration benefit, rather than to gain relief from parental abuse, neglect, abandonment, or similar mistreatment under state law. *See* H.R. Rep. No. 105-405 at 130 (explaining *bona fide* requirement); *see also* 6 USCIS Policy Manual, *supra*, at J.2(D)(5), J.3(A)(3)

(same). Therefore, the Petitioner has overcome this ground of the revocation; however, the Petitioner does not warrant USCIS' consent to SIJ classification because he is not otherwise eligible. *See* section 101(a)(27)(J)(iii) of the Act; 6 USCIS Policy Manual, *supra*, at J.2(D)(5).

D. The Record Lacks a Qualifying Parental Reunification Determination.

Although the Petitioner has overcome the above-listed grounds of the revocation, he does not otherwise warrant USCIS' consent to SIJ classification because the record does not show that the juvenile court made a specific determination as to the parent(s) and the basis(es) underlying the parental reunification determination. In addition, the record lacks evidence of the state law on which the juvenile court relied in making the parental reunification determination. The Act requires that a juvenile court determine that a 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 juvenile 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). The plain language of the statute indicates that the parental reunification determination must be made under state law and must encompass both a determination of abuse, neglect, abandonment, and/or similar mistreatment, and a determination that the petitioner could not be returned to the custody of the unfit parent(s). While the language of the juvenile court order may vary depending on individual state child welfare law, the juvenile court order must have been properly issued under state law and should use language establishing that the specific findings were made under state law, as an order that only cites or paraphrases immigration law and regulations will not suffice. Section 101(a)(27)(J)(i) of the Act. *See* 8 C.F.R. 204.11(d)(2)(ii) (stating that initial evidence for an SIJ petition includes a juvenile court order issued by a court of competent jurisdiction showing a determination that family reunification is not a viable option); *see also* 6 USCIS Policy Manual, *supra*, at J.2(D)(4), J.3(A)(2) (explaining that juvenile court order should use language establishing that specific findings were made under state law and not just mirror or cite to immigration law and regulations).

Here, the juvenile court found that "reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law[.]" and the hearing transcript shows that the Petitioner's mother sought a determination that reunification between the Petitioner and his father "is not reasonable due to abuse and neglect[.]" Despite the Petitioner's mother's testimony, the juvenile court did not specify with which parent and on which basis the juvenile court found that "reunification with one or both of the immigrant's parents is not viable[.]" as required by section 101(a)(27)(J)(i) of the Act. The hearing transcript provides factual details concerning the Petitioner's treatment by his father, but the record does not show that, as a result of those factual details, the juvenile court found that reunification between the Petitioner and his father is not viable due to abuse and neglect. *See* 6 USCIS Policy Manual, *supra*, at J.3(A)(4). On appeal, the Petitioner contends that Texas courts must consider evidence of abuse in determining whether to confer a sole or joint managing conservatorship. The Petitioner relies on section 153.004(a) and (b) of the Texas Family Code, which explain that courts must consider abuse and neglect; however, those are not the only considerations in which courts must engage,

see Tex. Fam. Code § 153.004(d)–(d)(1) (West 2017) (explaining that a court may not allow parental access to a child in certain circumstances unless the court finds that certain exceptions apply), and those citations do not show that the juvenile court made a specific finding as to the basis for the parental reunification determination.

Although the Petitioner argues on appeal that “[i]f sufficient factual evidence is not presented, the judge cannot make a conclusion of law[,]” and “the facts upon which the court relied upon [*sic*] were presented through oral testimony to the Judge[,]” the parental reunification determination is a legal conclusion, not a factual finding, and there is no evidence that the juvenile court made the specific legal conclusion that reunification with his father is not viable due to abuse and neglect as the Petitioner’s mother requested in her testimony. After all, in “examining the record and the evidence and argument of counsel[,]” as stated in the SAPCR order, the juvenile court may have reached a different conclusion regarding whether the Petitioner’s father’s conduct amounted to abuse, neglect, abandonment, or a similar basis under Texas law. Even if we were to infer that the juvenile court’s parental reunification determination does not pertain to the Petitioner’s mother because the Petitioner’s mother was granted sole managing conservatorship of the Petitioner, we cannot infer that the juvenile court legally concluded, based on the Petitioner’s mother’s testimony, that reunification between the Petitioner and his father is not viable “due to” one or more of the bases found under section 101(a)(27)(J)(i) of the Act. As the Petitioner has not supplied any evidence that reflects that the juvenile court made a determination that the Petitioner could not reunify with his father due to a specific basis, the Petitioner has not met his burden of establishing a qualifying parental reunification determination. *See Chawathe*, 25 I&N Dec. at 375 (discussing the preponderance of the evidence standard). Therefore, the Petitioner has not overcome this ground of the revocation.

In addition, the juvenile court’s order that the Petitioner’s father be appointed as the Petitioner’s Possessory Conservator calls into question whether the juvenile court determined that reunification between the Petitioner and his father is not viable. *See* 6 USCIS Policy Manual, *supra*, at J.2(D)(2) (explaining that lack of viable reunification generally means that juvenile court intends for finding that child cannot reunify with his or her parent (or parents) to remain in effect until child ages out of juvenile court’s jurisdiction). The temporary unavailability of a child’s parent does not meet the eligibility requirement that family reunification is not viable; however, actual termination of parental rights is not required. *Id.* The Texas Family Code explains that a parent who is not appointed as a sole or join managing conservator must be appointed as a possessory conservator “unless [the court] finds that the appointment is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child.” Tex. Fam. Code Ann. § 153.191 (West 2017). The Texas Family Code further notes that “[i]t is the policy of [Texas] to encourage frequent contact between a child and each parent for periods of possession that optimize the development of a close and continuing relationship between each parent and child.” *Id.* at § 153.251. While we acknowledge the Petitioner’s argument on appeal that “[t]he conclusions of the Texas SAPCR Order are a definitive pronouncement on the evidence presented to the Texas Court and reflective of the Judges [*sic*] conclusions of law and findings of fact[,]” the juvenile court’s appointment of the Petitioner’s father as his Possessory Conservator calls into question whether the juvenile court

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“definitive[ly] pronounce[d]” that the Petitioner’s reunification with his father is not viable. As a result, the record lacks a qualifying parental reunification determination.

III. CONCLUSION

We acknowledge the unfortunate facts as presented in the SAPCR order and underlying documents that led to the juvenile court’s determinations, that the record establishes a reasonable factual basis for the juvenile court’s determinations, and that there is no indication that the Petitioner’s request for SIJ classification is not *bona fide*; however, the Petitioner does not warrant USCIS’ consent to SIJ classification because the record lacks a qualifying parental reunification determination. Therefore, the Petitioner is ineligible for SIJ classification.

ORDER: The appeal is dismissed.

Cite as *Matter of J-E-B-J-*, ID# 1620874 (AAO Nov. 1, 2018)