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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: JUN 25 2009

IN RE: [redacted]

PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J), as amended by section 235(d) of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Miami, denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a 19-year-old native of the Bahamas and citizen of Haiti who seeks classification as a special immigrant juvenile (SIJ) pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4).

The District Director issued a decision on May 14, 2008, denying the petition for special immigrant juvenile (SIJ) classification finding that the petitioner was no longer eligible for the benefit. *See Decision of the District Director*. Specifically, the District Director found that because the petitioner was over the age of 18, he was no longer dependent upon the juvenile court or eligible for long-term foster care in Florida. *See id.* On appeal, the petitioner, through counsel, contends that the District Director's decision is no longer valid in light of the amendments to the SIJ provisions of the Act contained in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008).[1] *See Supplement to Memorandum of Law in Support of Appeal*, dated Jan. 14, 2009.

The record contains, *inter alia*, a copy of the petitioner's birth certificate, showing that he was born in the Bahamas on November 2, 1989; a letter from the Consul General of Haiti in Miami, Florida, stating that the petitioner "has the Haitian Nationality," dated December 7, 1999; a copy of the petitioner's mother's passport, showing a Haitian entry stamp date of April 4, 2003; a Petition for Temporary Custody of Minor Child by Extended Family, filed by [redacted] on December 7, 2005; a Final Order Upon Petition for Temporary Custody of Minor Child by Extended Family, issued in the Circuit of the Seventeenth Judicial Circuit in and for Broward County, Florida, hereinafter "juvenile court," on May 23, 2006; a Final Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status, issued by the juvenile court on May 23, 2006; a Memorandum of Law in Support of Appeal, dated June 27, 2008; and a Supplement to the Memorandum of Law in Support of Appeal, dated January 14, 2009. The entire record was considered in rendering a decision on the appeal.

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles as described in section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J). On December 23, 2008, the TVPRA was enacted. *See* Pub. L. No. 110-457, 122 Stat. 5044 (2008). Section 235(d) of the TVPRA amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). *Id.*; *see also* Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs., et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009) (available at http://www.uscis.gov/files/nativedocuments/TVPRA_SIJ.pdf) (hereinafter *TVPRA – SIJ Provisions*

[1] The petitioner withdraws his request for *nunc pro tunc* adjudication of his petition, which he sought based on his allegation of undue delay in processing this case. *See Supplement to Memorandum of Law in Support of Appeal, supra*. Because the AAO will sustain this appeal, it is unnecessary to consider the petitioner's allegations that the processing of this petition violated DHS policy, the Administrative Procedures Act, and due process.

Memo). The SIJ provisions of the TVPRA are applicable to this appeal. *See TVPRA – SIJ Provisions Memo* at 1 (noting that most of the SIJ provisions of the TVPRA took effect on March 23, 2009).

Section 101(a)(27)(J) of the Act, as amended by section 235(d) of the TVPRA, describes a "special immigrant" 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 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 chapter;

8 U.S.C. § 1101(a)(27)(J), as amended.

The TVPRA amended the SIJ definition by expanding the group of aliens eligible for SIJ classification to include aliens who have been placed under the custody of "an individual or entity appointed by a State or juvenile court." *See TVPRA section 235(d)(1)(A)*; *TVPRA – SIJ Provisions Memo* at 2. Second, the TVPRA removed the need for a juvenile court to deem a juvenile eligible for long-term foster care due to abuse, neglect, or abandonment, and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse,

neglect, abandonment, or a similar basis found under state law. *See id.*[2] Third, the TVPRA provides age-out protection to SIJ petitioners so that after December 23, 2008, a petition for SIJ status may not be denied based on age "if the alien was a child on the date on which the alien applied for such status." *TVPRA section 235(d)(6)*; *TVPRA – SIJ Provisions Memo* at 2-3. USCIS interprets the use of the term "child" in the TVPRA to refer to "an unmarried person under 21 years of age." *TVPRA – SIJ Provisions Memo* at 3. Fourth, the TVPRA requires USCIS to adjudicate SIJ petitions within 180 days of filing. *See TVPRA section 235(d)(2)*; *TVPRA – SIJ Provisions Memo* at 4.

Additionally, the TVPRA modified the two forms of consent—express consent and specific consent--required for SIJ petitions. First, instead of "expressly consent[ing] to the dependency order serving as a precondition to the grant of special immigrant juvenile status," the new definition requires the Secretary of Homeland Security, through the USCIS District Director, to "consent[] to the grant of special immigrant juvenile status." *TVPRA section 235(d)(1)(B)*; *TVPRA – SIJ Provisions Memo* at 3. This consent determination "is an acknowledgement that the request for SIJ classification is bona fide," meaning "that the SIJ benefit was not 'sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.'" *TVPRA – SIJ Provisions Memo* at 3 (quoting H.R. Rep. No. 105-405 at 130 (1997)); *cf.* Memo. from William R. Yates, Assoc. Dir. for Operations, U.S. Citizenship and Immig. Servs., to Reg. Dirs. & Dist. Dirs., *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions* (May 27, 2004) at 2 (available at http://www.uscis.gov/files/pressrelease/SIJ_Memo_052704.pdf) (quoting same legislative history) (hereinafter *SIJ Memo #3*). "An approval of an SIJ petition itself shall be evidence of the Secretary's consent." *TVPRA – SIJ Provisions Memo* at 3. Second, the TVPRA transferred the "specific consent" function, which applies to juveniles in federal custody, from the Secretary of Homeland Security, as previously delegated to U.S. Immigration and Customs Enforcement, to the Secretary of Health and Human Services. *Id.*

The record reflects that the petitioner was born in the Bahamas on November 2, 1989, to a Haitian mother and an unknown father. *See Birth Certificate, supra; Letter from Consul General of Haiti, supra.* On July 22, 1994, the petitioner and his mother attempted to enter the United States at or near West Palm Beach, Florida, after traveling from the Bahamas by boat. *See Form I-221, Order to Show Cause and Notice of Hearing*, dated July 22, 1994. The petitioner's mother left the United States on or around April 4, 2003. *See copy of passport for* [redacted] (showing a Haitian entry stamp date of April 4, 2003). The petitioner stated during his SIJ interview with USCIS that his mother left him in the care of her former partner, [redacted] with whom she has three additional children, and that he has not spoken to his mother since her departure.

On December 7, 2005, [redacted] filed a Petition for Temporary Custody of Minor Child by Extended Family, with the juvenile court. *See Petition for Temporary Custody of Minor Child, supra.* In this petition, [redacted] asserted that the petitioner's "mother's current whereabouts are unknown; she is believed to be in Haiti or unlawfully in the Bahamas." *Id.* On May 23, 2006, the juvenile court

[2] Note that USCIS has long defined "eligible for long-term foster care" to mean "that a determination has been made by the juvenile court that family reunification is no longer a viable option." *See* 8 C.F.R. § 204.11(a) (1993).

granted physical and legal custody of the petitioner to finding that the petitioner's mother's whereabouts are unknown, and that "[s]he has made no efforts to contact the minor child or [redacted]." *Final Order Upon Petition for Temporary Custody, supra.* After a hearing, the juvenile court also determined that the petitioner was "dependent upon the Court based on a finding that his father is unknown and his mother has abandoned and neglected him for over three years." *Final Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status, supra.* Further, the juvenile court found the petitioner to be eligible for long-term foster care because "reunification with his biological parents is no longer a viable option." *Id.* Finally, the juvenile court found that it was "not in the best interest of the Child to be returned to his home country, The Bahamas [and that it was] in the Child's best interest to remain in the United States." *Id.* The petitioner filed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant on July 13, 2006.

Upon review, the petitioner has established by a preponderance of the evidence that he meets the requirements for a grant special immigrant juvenile classification under section 101(a)(27)(J) of the Act, as amended by section 235(d) of the TVPRA. As discussed above, the TVPRA provides age-out protection to SIJ petitioners. Section 235(d)(6) of the TVPRA states:

> **Transition Rule:** Notwithstanding any other provision of law, an alien described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by paragraph (1), may not be denied special immigrant status under such section after the date of the enactment of this Act based on age if the alien was a child on the date on which the alien applied for such status.

TVPRA section 235(d)(6). This means that USCIS "must not deny or revoke SIJ status based on age if the alien was a child on the date the SIJ petition was properly filed if it was . . . pending as of December 23, 2008." *TVPRA – SIJ Provisions Memo* at 2-3. Here, the petitioner properly filed his SIJ petition when he was 16 years old. *See Form I-360, supra.* Therefore, he is protected by the age-out provisions of the TVPRA, and his petition may not be denied based on age. *See TVPRA section 235(d)(6)*; *TVPRA – SIJ Provisions Memo* at 2-3.[3]

The petitioner meets the additional requirements for SIJ classification because he was declared dependent on a juvenile court, *see Final Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status, supra*; *Final Order Upon Petition for Temporary Custody, supra*; the juvenile court determined that the petitioner was abandoned and neglected, and that reunification with his mother

[3] To the extent that the District Director's decision implies that actual eligibility for long-term foster care was required, this finding is erroneous. The SIJ regulations defined "eligible for long-term foster care" to mean "that a determination has been made by the juvenile court that family reunification is no longer a viable option." *See* 8 C.F.R. § 204.11(a) (1993). Accordingly, a petitioner could meet "the foster care component of 8 C.F.R. § 204.11(c)(5) by showing that the juvenile court on which he is dependent continues to find that it is not viable for him to be reunited with his family." *Matter of Perez Quintanilla*, USCIS Adopted Decision at 10 (AAO June 7, 2007) (available at http://www.uscis.gov/files/pressrelease/PerezSIJ073007.pdf).

was not viable, *see Final Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status, supra*; and the juvenile court determined that it would not be in the petitioner's best interest to be returned to his country of last habitual residence, *see id.* Accordingly, the District Director's decision will be withdrawn and the petition will be approved.

In visa petition proceedings, the burden of proof is on the applicant to establish eligibility for the benefit sought by a preponderance of the evidence. *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). In this case, the petitioner has proven eligibility for the benefit sought.

ORDER: The appeal is sustained.