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

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FILE: [redacted] Office: HARTFORD, CT Date:

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)

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Hartford Field Office Director denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 22-year-old native 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 Field Office Director determined that the petitioner had not been found eligible for long-term foster care, was not in the custody of a state agency or department and that no best-interest determination had been made regarding the petitioner's possible return to Haiti. The director denied the petition accordingly.

On appeal, counsel claims that the applicant remains in the custody of the Connecticut Department of Children and Families (DCF) in whose care he was placed as a neglected child. The relevant evidence supports counsel's claim that the petitioner remains in DCF custody. However, the record does not establish that reunification with the petitioner's parents is not viable or that an administrative or judicial determination was made that it would not be in the petitioner's best interest to return to Haiti.

The record contains, *inter alia*, a copy of the petitioner's birth certificate; the petitioner's Order of Commitment to the Connecticut Superior Court for Juvenile Matters dated January 7, 1997; a related Status Report dated January 11, 2005; and the petitioner's DCF Application for Re-Entry and accompanying Case History Narrative dated February 4, 2008.

The AAO reviews these proceedings de novo. *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). 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 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (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 Memo*). The SIJ provisions of the TVPRA are applicable to this appeal. *See* Section 235(h) of the TVPRA (stating that the TVPRA shall "apply to all aliens in the United States in pending proceedings before the Department of Homeland Security" on December 23, 2008).

Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J), defines a special immigrant juvenile 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 Act [.]

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). 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* TVPRA section 235(d)(1)(A).[1] Third, the TVPRA provides age-out protection to SIJ petitioners so that after December 23, 2008, a petition for SIJ classification may not be denied based on age "if the alien was a child on the date on which the

[1] 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).

alien applied for such status." TVPRA section 235(d)(6). 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.

The record in this case shows that the petitioner came to the United States on or about 1994, when he was approximately seven years old. When the petitioner was eight years old, he was abused by "his maternal aunt, who was his primary caretaker but not his legal guardian." *Narrative Case History* at 1. On January 7, 1997, the Connecticut Superior Court for Juvenile Matters found the petitioner neglected and committed him to the care of the Commissioner of Children and Families (DCF) for 12 months. *Commitment Order.* In 2006, the petitioner withdrew from DCF services, but requested re-entry in 2007 and was again accepted into the DCF program in 2008. *Narrative Case History* at 2-3. DCF filed the instant Form I-360 on the petitioner's behalf shortly before the petitioner turned 21.

The Field Office Director erroneously determined that the petitioner was not in the custody of DCF and had not been found eligible for long-term foster care. As noted above, the TVPRA eliminated the requirement for a juvenile court to deem a petitioner eligible for long-term foster care. *See* TVPRA section 235(d)(1)(A). Moreover, although the petitioner was originally committed to DCF for a one-year period, the record demonstrates that he remained in DCF custody until the age of 19, briefly left DCF care, but re-entered the DCF adolescent program when he was under 21 years old. Accordingly, the petitioner was a child in the court-ordered custody of DCF at the time his Form I-360 was filed and he currently remains in the care and custody of DCF.

The appeal cannot be sustained, however, because the record does not establish that the juvenile court determined that the petitioner's reunification with one or both of his parents was not viable due to abuse, neglect, abandonment, or a similar basis found under State law, as required by section 101(a)(27)(J)(i) of the Act. The court's commitment order and status report state that the petitioner was found neglected and abused by his maternal aunt, but the record is silent regarding the petitioner's parents. The status report states the address of the petitioner's mother and father in Port-Au-Prince, Haiti, but it makes no further mention of their residence, living circumstances or relationship with the petitioner. The record simply notes that the "circumstances in which [the petitioner] was sent to the United States are unclear." *Narrative Case History* at 1. Counsel does not address the issue of parental reunification on appeal and the record does not establish that the petitioner's parents abused, neglected or abandoned him rendering family reunification impossible.

The petitioner also would not qualify for SIJ classification under the prior version of section 101(a)(27)(J)(i), which was in effect at the time this petition was filed. That section required that a juvenile be deemed "eligible for long-term foster care due to abuse, neglect, or abandonment," and the regulation at 8 C.F.R. § 204.11(a) & (c) (1993) defines "eligible for long-term foster care" as a juvenile court determination that "family reunification is no longer a viable option." Under the previous statute, therefore, family reunification must not have been viable due to abuse,

neglect, or abandonment. In sum, the petitioner has provided no evidence that reunification with his parents is not viable due to their abuse, neglect, or abandonment as required by both section 101(a)(27)(J)(i) of the Act and the former statute prior to its amendment by the TVPRA.

The petitioner has also failed to demonstrate that it was determined in administrative or judicial proceedings that it would not be in his best interest to be returned to Haiti, as required by section 101(a)(27)(J)(ii) of the Act. The court report notes that the petitioner's criminal convictions put him at risk of deportation and that he met with an immigration attorney. *Status Report* at 3. The record also contains an application for asylum, which the petitioner filed in 1995, but later withdrew. *Form I-589*, filed March 20, 1995 and withdrawn on April 25, 1995. Although counsel indicates that the petitioner intends to file a new asylum application with the Immigration Court, he submits no evidence that the juvenile court determined that it would not be in the petitioner's best interest to be returned to Haiti. *See Respondent's Written Pleading to the Hartford Immigration Court*, dated October 8, 2009. Counsel also fails to address this issue on appeal. Counsel merely asserts that "the documents provided to the USCIS conclusively proved the criteria needed for classification as Special Immigrant Juvenile." *Petitioner's Brief in Support of Appeal* at 6. Counsel cites no court documentation or other evidence in the record demonstrating that any judicial or administrative determination was made that it would not be in the petitioner's best interests to be returned to Haiti.

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. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). In this case, the petitioner has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed