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



U.S. Citizenship  
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Services

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OCT 14 2009

FILE:

[REDACTED]  
AAO 09 093 50006

Office: NEW YORK

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, 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 23-year-old native and citizen of Guyana 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 or around October 22, 2004,<sup>1</sup> denying the petition for SIJ classification finding that the petitioner was not eligible for the benefit because the juvenile court order did not find him eligible for long-term foster care. *See Decision of the District Director* at 1. On appeal, the petitioner, through counsel, claims that the District Director erred in denying his petition for special immigrant juvenile classification because the juvenile court's order satisfied the long-term foster care requirement. *See Appeal Brief* at 3.

The record contains, *inter alia*, a copy of the petitioner's birth certificate; an Order Appointing Guardian of the Person, issued by the Family Court of the State of New York, County of Kings (hereinafter "juvenile court") on March 4, 2003; a Letter of Guardianship of the Person of a Minor, issued by the juvenile court on March 4, 2003; a statement from the petitioner, dated February 4, 2002; and a brief on appeal, dated November 2, 2004. On June 18, 2009, the AAO issued a request to the petitioner for additional documentation from the juvenile court proceedings relating to the issue of whether it was in the petitioner's best interest to be returned to Guyana. Counsel submitted a brief with exhibits in response. 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](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).

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<sup>1</sup> The District Director's decision is dated May 25, 2004. *See Decision of the District Director*. However, the record evidence shows that the decision was not issued until October 22, 2004. *See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant* (containing handwritten notation that the petition was denied on October 21, 2004); *Letter from Petitioner to [REDACTED]* dated June 6, 2008 (including copy of DHS envelope postmarked on October 22, 2004).

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 Act[.]

8 U.S.C. § 1101(a)(27)(J).

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.” 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 id.*<sup>2</sup> 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 alien applied for such status.” TVPRA

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<sup>2</sup> Note that U.S. Citizenship and Immigration Services (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).

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.” *Id.* at 3.

Additionally, the TVPRA modified the two forms of consent—formerly “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). This consent determination “is an acknowledgement that the request for SIJ classification is bona fide,” meaning that neither the dependency order nor the best interests determination were “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.” See 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 (quoting H.R. Rep. No. 105-405 at 130 (1997)).<sup>3</sup> “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. TVPRA section 235(d)(1)(B).

The record reflects that the petitioner was born on May 13, 1986, in Guyana. *See Birth Certificate of [REDACTED]*. The petitioner states that he was abandoned by his parents in Guyana following their divorce in 1990. *See Form I-589, Application for Asylum*, dated Feb. 4, 2002. He lived with his grandparents until 1995, and then lived with distant and abusive relatives who were not able to care for him. *Id.*; *see also Statement of [REDACTED]*, dated Feb. 4, 2002. The petitioner applied for permission to enter the United States on or around November 23, 2001, and he was placed in removal proceedings. *See Form I-862, Notice to Appear*, dated Nov. 25, 2001. On December 4, 2002, the petitioner’s grandmother, [REDACTED] petitioned the juvenile court for an order of guardianship. *See Order Appointing Guardian of the Person, supra*. On March 4, 2003, the juvenile court issued an order appointing the petitioner’s grandmother as his guardian. *Id.*; *Letter of Guardianship of the Person of a Minor, supra*. The juvenile court issued a final order of guardianship because “it appear[ed] to this court that the child has been abandoned by [his] biological parents, based on [REDACTED] testimony.” *Order Appointing Guardian of the Person, supra*. The juvenile court also found that “[f]amily reunification does not appear to be viable.” *Id.* The record contains an affidavit from [REDACTED] the petitioner’s grandfather, indicating that “the whereabouts of [REDACTED] parents are presently unknown by our family, and he has no immediate relative in Guyana to whom he could apply for care or guardianship.” *Affidavit of [REDACTED]*, dated Feb. 21, 2002. The petitioner filed a petition for SIJ classification on April 10, 2003, when he was 16 years old. *See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant*.

Upon review, the AAO determines that the petitioner has established eligibility for SIJ classification under section 101(a)(27)(J) of the Act, as amended by the TVPRA. First, section 101(a)(27)(J)(i) of the Act pertains to an individual “who has been declared dependent on a juvenile court located in the

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<sup>3</sup> This memorandum is available at [http://www.uscis.gov/files/pressrelease/SIJ\\_Memo\\_052704.pdf](http://www.uscis.gov/files/pressrelease/SIJ_Memo_052704.pdf).

United States or whom such a court has legally committed to, or placed under the custody of . . . an individual . . . appointed by a State or juvenile court located in the United States.” Here, the juvenile court legally committed the petitioner to the custody of his grandmother, satisfying section 101(a)(27)(J)(i) of the Act. *See Order Appointing Guardian of the Person, supra.*

Second, counsel correctly contends that the juvenile court’s order satisfied the long-term foster care requirement that was in place at the time of the District Director’s decision.<sup>4</sup> Specifically, 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.” 8 C.F.R. § 204.11(a) (1993). A petitioner was not required “to directly establish that he meets all State requirements to be placed into a foster care program.” *Matter of Perez Quintanilla*, USCIS Adopted Decision at 10 (AAO June 7, 2007).<sup>5</sup> Rather, a petitioner could have met “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.” *Id.* Because the juvenile court found that family reunification did not appear to be viable, the District Director erred in concluding that the petitioner was ineligible for SIJ classification because the juvenile court’s guardianship order did not discuss eligibility for long-term foster care.

Finally, the juvenile court appointed the petitioner’s grandmother in New York as his guardian. Section 661 of the New York Family Court Act provides that “the court may appoint a permanent guardian of a child if the court finds that such appointment is in the best interests of the child.” Accordingly, the juvenile court necessarily determined that it was in the petitioner’s best interests to reside with his appointed guardian in New York, and that it was not in his best interests to be returned to Guyana where he was abandoned by his parents, and where he had no immediate relatives to whom he could apply for care or guardianship. *See Order Appointing Guardian of the Person, supra; Affidavit of [REDACTED] supra.*

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 shown by a preponderance of the evidence that he is eligible for SIJ classification. Accordingly, the appeal will be sustained, the District Director’s decision will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained. The petition is approved.

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<sup>4</sup> As discussed above, 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. *See* TVPRA section 235(d)(1)(A).

<sup>5</sup> This decision is available at <http://www.uscis.gov/files/pressrelease/PerezSIJ073007.pdf>.