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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C6

[redacted]

FILE: [redacted] Office: NATIONAL BENEFITS CENTER Date: FEB 07 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center, revoked the approval of 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 19-year-old native and citizen of Honduras who was granted classification as a special immigrant juvenile (SIJ) on December 6, 2008, pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4). On May 17, 2010, the director issued a Notice of Intent to Revoke approval of the SIJ petition pursuant to 8 C.F.R. § 205.2 (revocation on notice). The petitioner, through counsel, filed a response to the Notice of Intent to Revoke. The director found the response insufficient to establish the petitioner's eligibility, and notified the petitioner of the revocation of the approval of the SIJ petition on August 2, 2010. On appeal, the petitioner contends through counsel that the director erred in revoking approval of the SIJ petition because he has satisfied all of the requirements for SIJ classification. *See Brief on Appeal*, received Oct. 4, 2010.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. (USCIS), et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009) (hereinafter *TVPRA – SIJ Provisions Memo*).[1] 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, 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

[1] This memorandum is available at http://www.uscis.gov/files/nativedocuments/TVPRA_SIJ.pdf.

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." TVPRA section 235(d)(1)(A). The TVPRA also 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]

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," *TVPRA – SIJ Provisions Memo* at 3, meaning that neither the dependency order nor the best interest determination was "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," H.R. Rep. No. 105-405 at 130 (1997); *see also* 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*

[2] 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).

Juvenile Status Petitions (May 27, 2004) at 2 (hereinafter *SIJ Memo #3*).[3] "An approval of an SIJ petition itself shall be evidence of the Secretary's consent." *TVPRA – SIJ Provisions Memo* at 3.

The record reflects that the petitioner was born in Honduras on February 20, 1990, to [redacted] *See Birth Certificate of* [redacted] The petitioner arrived in the United States without being admitted or paroled on or around February 2, 2007. *See Form I-360*, filed Nov. 7, 2008. He was apprehended by the border patrol on February 4, 2007, and placed in removal proceedings. The petitioner stated to the border patrol agent that he entered the United States to reunite with his parents in Maryland.

The petitioner was admitted to an unaccompanied alien minor shelter care program on February 8, 2007. *See Southwest Key Program Intake Form*, dated Feb. 8, 2007. The petitioner was released from the program into the care and custody of his maternal uncle, [redacted] on March 15, 2007. *See Office of Refugee Resettlement Verification of Release Form*, dated Mar. 15, 2007.

On January 24, 2008, the applicant's uncle, through present counsel, filed a petition for guardianship over the petitioner with the Circuit Court for Frederick County, Maryland (hereinafter juvenile court). The petition averred that the petitioner had been abandoned by his parents, and that the addresses and occupations of the petitioner's parents were unknown. *See Petition for Guardianship of the Person of a Minor*, dated Jan. 18, 2008; *see also Affidavit of* [redacted], dated Jan. 18, 2008 (stating that the petitioner has been unable to locate his parents); *Affidavit of* [redacted], dated Jan. 18, 2008 (same). On October 16, 2008, the juvenile court issued an Order for Guardianship of a Minor. *See Order for Guardianship*, filed Oct. 8, 2008. The juvenile court found that the petitioner was eligible for long-term foster care due to abandonment by both parents, and that it would not be in his best interest to be returned to his previous country of nationality. *Id.* The court ordered the petitioner to be placed under the guardianship of his uncle, subject to revocation upon the request of either parent. *Id.*

The petitioner filed a request for SIJ classification with USCIS on November 7, 2008, when he was 18 years old. Based on the juvenile court's order, USCIS approved the petition on December 6, 2008. The petitioner filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on November 3, 2009. Documentation from the juvenile court and the unaccompanied minor shelter care program was obtained and reviewed in conjunction with the adjustment application. This documentation revealed inconsistencies between the claims of abandonment made before the juvenile court and the petitioner's continuous contact with his parents. Specifically, shelter documents reflect that the petitioner had regular telephone contact with his parents while he was residing in the unaccompanied alien minor shelter. *See Admission Assessment*, dated Feb. 13, 2007; *Weekly Progress Notes*, dated Feb. 14, 2007; *Family Contact Logs*. Additionally, the applicant's mother executed a notarized Affidavit of Support (Form I-134) on behalf of the petitioner stating that she "will support [her] son [redacted] with education, room and board as long [as] he stays with [her] in the United States." *Form I-134*,

[3] SIJ Memo #3 is available at http://www.uscis.gov/files/pressrelease/SIJ_Memo_052704.pdf.

dated Mar. 2, 2007. Further, the shelter records state that the petitioner's uncle resided with the petitioner's parents in Maryland. *See Weekly Progress Notes*, dated Feb. 14, 2007.

Based on these inconsistencies, the director issued a Notice of Intent to Revoke approval of the SIJ petition. *See Notice of Intent to Revoke*, dated May 17, 2010. The Notice provided the petitioner with an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation. *Id.* In response, the petitioner submitted a letter from counsel contending that there are no discrepancies in the evidence. *See Response to Notice of Intent to Revoke*, dated June 16, 2010. No further documentation or evidence was submitted. The director issued a final revocation of the SIJ approval on August 2, 2010. *See Notice of Decision*, dated Aug. 2, 2010. The director found that the evidence contradicted the petitioner's claim of abandonment, and the record suggested that the juvenile court order was sought primarily for the purpose of obtaining lawful permanent resident status. *Id.*

On appeal, the petitioner contends that his SIJ classification was erroneously revoked. *See Notice of Appeal (Form I-290B)*, filed Aug. 20, 2010; *Brief on Appeal.* Specifically, the petitioner contends that USCIS had an opportunity to present evidence before the juvenile court but failed to do so, and cannot now challenge the juvenile court's findings. *Brief on Appeal.* Further, counsel claims that: (1) the petitioner has not reunited with his parents because the record shows that he was released from immigration custody to his uncle, not to his parents; and (2) that the petitioner's telephone contact with his parents does not undermine his classification as a special immigrant juvenile. *Id.* No further documentation or evidence was submitted on appeal.

Pursuant to section 205 of the Act, 8 U.S.C. § 1155, "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition." Here, the record shows that the director had good and sufficient cause to revoke the approval of the petition. The documentation in the record indicates that the petitioner arrived in the United States to reunite with his parents, that he maintained contact with his parents while he was in immigration custody, that his mother executed a notarized affidavit of support affirming her intention to support her son, and that the petitioner was released into the custody of an uncle who resided at the same location as his parents. This evidence contradicts the claim of parental abandonment averred in the juvenile court guardianship petition. Further, the petitioner has provided no evidence explaining or reconciling the identified inconsistencies. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (noting that statements or assertions of counsel do not constitute evidence); *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (attempting to explain or reconcile inconsistencies will not suffice unless competent objective evidence is submitted). Given this record, the petitioner has not met his burden of showing by a preponderance of the evidence that the juvenile court order was sought primarily for the purpose of obtaining relief from abuse, neglect or abandonment, rather than for the purpose of obtaining an immigration benefit. Accordingly, the Secretary's consent to the grant of SIJ classification was made in error. *See SIJ Memo #3* at 2*; see also TVPRA – SIJ Provisions Memo* at 3.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the petitioner to establish eligibility for the benefit sought. Here, the petitioner has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.