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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

DATE: FEB 2 2 2012 Office: NEWARK, NJ FILE: [redacted]

IN RE: Self-Petitioner: [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 Field Office Director, Newark, New Jersey (the director), denied the special immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 14-year-old citizen of Honduras who seeks classification as a special immigrant juvenile (SIJ) pursuant to sections 101(a)(27)(J) and 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4).

The director determined that the petitioner's request for SIJ classification was not bona fide because the record indicated that the petitioner sought the juvenile court order primarily for the purpose of obtaining lawful permanent residency in the United States, rather than gaining relief from parental abuse, neglect, abandonment, or a similar basis under state law. On appeal, counsel reasserts the petitioner's eligibility and claims that the director erroneously focused on the petitioner's reasons for coming to the United States and not his intent in seeking the juvenile court order, which was to obtain relief from his father's abandonment.

On the Form I-290B, Notice of Appeal, filed on September 9, 2011, counsel indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. To date, over five months later, we have received nothing further from counsel or the petitioner and consider the record complete.

Applicable Law

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.[1] Section 101(a)(27)(J) of the Act 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;

[1] The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, 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). *See* section 235(d) of the TVPRA; *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*). The SIJ provisions of the TVPRA are applicable to this appeal. *See* section 235(h) of the TVPRA.

> (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[.]

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through a U.S. Citizenship and Immigration Services (USCIS) Field Office Director, to consent to the grant of special immigrant juvenile status. This consent determination "is an acknowledgement that the request for SIJ classification is bona fide,"[2] meaning that neither the juvenile court 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 Juvenile Status Petitions* (May 27, 2004) at 2 (hereinafter *SIJ Memo #3*) ("An approval of an SIJ petition itself shall be evidence of the Secretary's consent.").

Pertinent Facts

The record reflects that the petitioner was born in Honduras on December 29, 1997. No father is identified on the applicant's birth certificate. On June 29, 2008, the petitioner was apprehended at the Mexican border when he and his sister attempted to enter the United States using border crossing cards issued to other individuals. The petitioner's sister, who was 21 years old at the time, stated that their mother who was residing in New Jersey had obtained the documents and made the arrangements for her and the petitioner to travel to the United States. On August 12, 2008, the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR) released the petitioner into the custody of his mother's boyfriend.

On September 21, 2009, the Superior Court of New Jersey, Somerset County, Chancery Division, Family Part (juvenile court) granted custody of the petitioner to his mother and his mother's boyfriend. The court order also stated that the petitioner was "determined to be abandoned by his father [J-B-] and reunification with his father is not viable . . . . It is not in [the

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[2] *TVPRA – SIJ Provisions Memo, supra* n.1 at 3.

petitioner's] best interest to be returned to his country of nationality and country of last habitual residence, Honduras . . . ."

The petitioner filed this Form I-360 on November 10, 2009. The director subsequently issued a combined request for evidence (RFE) and notice of intent to deny (NOID) the petition because the juvenile court order appeared to have been sought primarily for immigration benefits and not for relief from parental abuse, neglect or abandonment. The petitioner, through counsel, responded with additional evidence which the director found insufficient to establish that the request for SIJ classification was bona fide and merited the agency's consent. The petition was denied and counsel timely appealed. The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, counsel's claims on appeal fail to overcome the ground for denial for the following reasons.

Analysis

The petitioner bears the burden of proof to establish that his request for SIJ classification is bona fide and that he sought the juvenile court order primarily to obtain relief from parental abuse, neglect, or abandonment, rather than to gain lawful permanent residency. H.R. Rep. No. 105-405 at 130 (1997); *see also TVPRA – SIJ Provisions Memo* at 3; *SIJ Memo #3* at 2. The director concluded that because the petitioner's father had abandoned him before birth, he did not travel to the United States due to his father's abandonment, but to be reunited with his mother. On appeal, counsel claims the director erroneously focused on the petitioner's purpose for traveling to the United States and not on his intent in seeking the juvenile court order. While many of the director's comments regarding the petitioner's travel to the United States were unnecessary, we find no error in his ultimate determination that the agency's consent is not warranted in this case.

On appeal, counsel claims the juvenile court order was sought primarily to obtain relief from the petitioner's father's abandonment. However, the record contains no probative evidence of that abandonment. Although the juvenile court determined that the petitioner's father abandoned him and the order includes the requisite nonviability-of-reunification and best-interest determinations, the order contains no factual findings upon which those determinations were made. The court order names the petitioner's father, but this individual is not identified on the petitioner's birth certificate. The petitioner's mother and her boyfriend credibly explain their reasons for seeking custody of the petitioner, but neither of them identify the petitioner's father by name or discuss the circumstances of his abandonment. In her letter submitted in response to the RFE/NOID, the petitioner's mother stated that his father abandoned them in 1997 when she was five months pregnant and that she had no contact with him and he provided them with no financial or emotional support. The petitioner's mother does not name the petitioner's father or provide any further information regarding his abandonment. In his March 25, 2011 letter, the petitioner's mother's boyfriend stated that the petitioner's father "abandoned him and left him without ever looking back." He also fails to identify the petitioner's father by name and the record indicates that he has no personal knowledge of the relevant facts because he did not meet the petitioner's mother until 2002, five years after the petitioner's father abandoned him.[3]

[3] The August 8, 2008 ORR Release Request Worksheet states that petitioner's mother and her boyfriend "have known each other since 2002."

On appeal, counsel cites the preamble to the proposed rule on Special Immigrant Juvenile Petitions in support of her claim that the juvenile court order was sought primarily to obtain relief from the abandonment of the petitioner's father. A proposed rule is not binding and the portion cited by counsel fails to provide persuasive authority for her claim. To the contrary, the proposed rule discusses the types of evidence that may be considered sufficient to merit the agency's consent to SIJ classification. *See* 76 Fed. Reg. 54978, 54981 (Sept. 6, 2011). Counsel does not acknowledge that the present record lacks such evidence. The petitioner's father's identity and abandonment are not discussed in the letters from the petitioner's mother and her boyfriend, the ORR Release Request Worksheet, and the documents from the petitioner's initial placement with Lutheran Social Services of the South. Counsel has been afforded three opportunities to present evidence of the factual findings upon which the juvenile court order was based and did not submit such evidence initially, in response to the RFE/NOID, or on appeal. Without the factual findings supporting the court's order and without any evidence that the individual named in the court order is the petitioner's father, the present record is insufficient for USCIS to consent to the petitioner's request for SIJ classification. *See id.* ("Orders lacking specific factual findings generally are not sufficient to provide a basis for consent, and must be supplemented by separate findings or any other relevant evidence establishing the factual basis for the order.")

Conclusion

Although the petitioner obtained the juvenile court order and determinations required by subsections 101(a)(27)(J)(i) and (ii) of the Act, the record lacks evidence of the facts supporting that order. Consequently, the record is insufficient for USCIS to consent to a grant of SIJ classification in this case, as required by subsection 101(a)(27)(J)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.