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

(b)(6)

[redacted]

Date: APR 0 3 2013 Office: BOISE, ID 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Boise, Idaho Field Office Director (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 19-year-old citizen of El Salvador who seeks classification as a special immigrant juvenile (SIJ) as defined at section 101(a)(27)(J) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(27)(J), and pursuant to section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4). The director denied the petition because he found that the petitioner sought SIJ classification primarily for immigration purposes. On appeal, counsel submits a brief reasserting the petitioner's eligibility.

Applicable Law

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles, defined in section 101(a)(27)(J) of the Act as:

> an immigrant who is present in the United States—
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> (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;
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> (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[.]

Pertinent Facts

The record reflects that the petitioner was born in El Salvador on [redacted] On September 21, 2009, the petitioner's uncle filed a petition for guardianship of the petitioner with the [redacted], magistrate division. On February 11, 2010, the Court appointed the petitioner's uncle as guardian of the petitioner when

the petitioner was 16 years old. The Court did not make a determination that the petitioner had been abused, neglected, and/or abandoned by his parents or that it would not be in the petitioner's best interest to return to El Salvador. The Court issued a second order on May 2, 2011 when the petitioner was 17 years old. In the second order, the Court found that the petitioner's reunification with his parents was not viable due to abandonment or a related basis under state law and that it was not in his best interest to be returned to El Salvador. The petitioner filed the instant Form I-360 on January 31, 2012, when he was 18 years old although he filed a prior Form I-360[1] on November 19, 2010 when he was 16 years old. The director denied both petitions on the same day, but counsel only appealed the second self-petition.

On appeal, counsel submits a brief asserting that the petitioner was abandoned by his parents and did not seek the guardianship order primarily for an immigration benefit. Counsel's arguments fail to establish the petitioner's eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

Analysis

The director determined that the petitioner's request for SIJ classification was not bona fide because the record indicated that he maintained a relationship with his parents. The director also determined that the court order granting guardianship to the petitioner's uncle did not terminate the parental rights of the petitioner's mother and father and did not show "willful failure to maintain a parent child relationship," which the director believed was required to show abandonment under Idaho law. The director concluded that the petitioner had not been abused, neglected or abandoned and declined consent to his SIJ request.

The director's determination that the SIJ request was not bona fide was misguided for two reasons. First, the director misinterpreted the consent requirement of subsection 101(a)(27)(J)(iii) of the Act by stating:

> The Service contends that you are seeking the classification of a SIJ for the purpose of obtaining the status of an alien lawfully admitted for permanent residence. The consent determination by the Secretary, through the USCIS District Director cannot be given when the SIJ benefit was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence . . . .

Director's Decision at p. 3.

Clearly, the purpose of filing a request for SIJ classification is to obtain lawful permanent residency as section 101(a)(27)(J) of the Act defines an SIJ as "an immigrant." The issue is whether the juvenile court order, *not* the SIJ petition, was sought primarily to obtain relief from parental abuse, neglect or abandonment. H.R. Rep. No. 105-405 at 130 (1997).[2]

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[1] Receipt number

[2] *See also* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54979 (proposed Sept. 6, 2011) (discussing Congressional intent to tie SIJ eligibility "more directly to *judicial* findings of abuse, abandonment, or neglect" (emphasis added)).

Second, the director erred by going behind the Court's order to make his own determination that the petitioner had not been abandoned by his parents under Idaho law. When adjudicating an SIJ petition, USCIS examines the juvenile court order only to determine if it contains the requisite findings of dependency or custody; nonviability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner's best interests, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. USCIS is not the fact finder in regards to these issues of child welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. Section 101(a)(27)(J)(i)-(ii) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (referencing the determinations of a juvenile court or other administrative or judicial body). Accordingly, USCIS examines the relevant evidence only to ensure that the record contains a reasonable factual basis for the court's order.[3] Court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS's consent. Orders lacking specific factual findings are insufficient to warrant the agency's consent and must be supplemented by other relevant evidence demonstrating the factual basis for the court's order.[4]

In this case, the court order does not contain specific factual findings underlying the Court's determinations regarding best-interest and nonviability of parental reunification due to abandonment. The petition for guardianship only briefly describes the circumstances surrounding the petitioner's abandonment by his parents and does not address whether or not it would be in his best interest to return to El Salvador or remain in the United States with his guardian. The record contains no other, relevant supporting evidence. Because of these deficiencies, consent to SIJ classification may not be warranted in this case. However, the director's decision shall be withdrawn to the extent that the director went behind the court order to make his own determination that the petitioner was not abandoned under Idaho law and to conclude that the petitioner's SIJ request was not bona fide.

Despite the director's misguided analysis, the petition must remain denied. Beyond the director's decision, the petitioner is ineligible for SIJ classification because the guardianship order had already terminated at the time his Form I-360 was filed.[5] Under the Idaho Code, a guardianship appointment will terminate upon the minor's "attainment of majority." Idaho Code Ann. § 15-5-210 (West 2012). The age of majority in Idaho is 18. *Id.* at § 15-1-201(29) (defining "minor" as a male or female "under eighteen (18) years of age"). In this case, the petitioner turned 18 on December 30, 2011, one month before he filed this Form I-360 on

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[3] *See* USCIS Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions, 4-5 (May 25, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

[4] *Id.* at 5. *See also* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981, 54985 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11).

[5] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

January 31, 2012. The record lacks any evidence that the court retained jurisdiction under any other provision of Idaho law to extend the petitioner's guardianship order after he turned 18. Accordingly, the petitioner's guardianship had terminated before this Form I-360 was filed and he was not the subject of a valid custody or dependency order in effect at the time of filing, as required by subsection 101(a)(27)(J)(i) of the Act. *See also* 8 C.F.R. § 204.11(c)(5).

Conclusion

The record fails to demonstrate that any juvenile court dependency or custody order was in effect at the time this petition was filed, as required by subsection 101(a)(27)(J)(i) of the Act and the appeal will be dismissed.

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.