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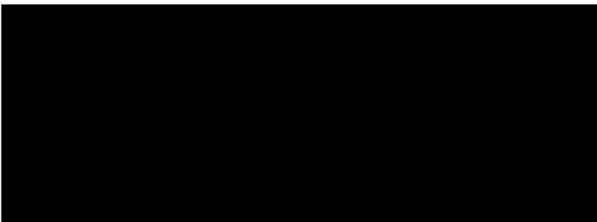
FILE: [REDACTED] Office: PHILADELPHIA, PA

OCT 13 2009

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), as amended by section 235(d) of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008)

ON BEHALF OF PETITIONER:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, Philadelphia, Pennsylvania, 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 21-year-old native and citizen of Mexico 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 denied the petition for SIJ classification finding that the petitioner was not eligible for the benefit. *See Decision of the District Director.*

On appeal, the petitioner requests reconsideration of the denial, and submits a number of documents in support of her petition. *See Notice of Appeal; Letter from [REDACTED]* The record contains, *inter alia*, a letter from the Casework Supervisor of Adams County Children and Youth Services (hereinafter ACCYS), dated September 2, 2005; a letter from the petitioner's former foster parent [REDACTED] dated September 6, 2005; a June 28, 2004 order of the Court of Common Pleas of Adams County Pennsylvania (hereinafter juvenile court), granting custody of the petitioner to her maternal uncle [REDACTED] and a copy of the petitioner's birth certificate. On June 4, 2009, the AAO issued a request to the petitioner for additional documentation from the juvenile court and ACCYS. In response, the petitioner, through counsel, submitted relevant documentation. 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, 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 chapter;

8 U.S.C. § 1101(a)(27)(J), as amended.

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 located in the United States.” See TVPRA section 235(d)(1)(A); *TVPRA – SIJ Provisions Memo* at 2. 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.*¹ Third, the TVPRA provides age-out protection to SIJ petitioners so that after December 23, 2008, a petition for SIJ status 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 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.” *TVPRA – SIJ Provisions Memo* at 3. Fourth, the TVPRA requires USCIS to adjudicate SIJ petitions within 180 days of filing. See TVPRA section 235(d)(2); *TVPRA – SIJ Provisions Memo* at 4.

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); *TVPRA – SIJ Provisions Memo* at 3. 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

¹ 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).

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 (available at http://www.uscis.gov/files/pressrelease/SIJ_Memo_052704.pdf) (quoting H.R. Rep. No. 105-405 at 130 (1997) (hereinafter *SIJ Memo #3*). “An approval of an SIJ petition itself shall be evidence of the Secretary’s consent.” *TVPPRA – SIJ Provisions Memo* at 3. Second, the TVPPRA 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. *Id.*

The petitioner was born on August 26, 1988, in Mexico. See *Birth Certificate of* [REDACTED]. Her parents were not married, and the petitioner has had no relationship or contact with her father. *ACCYS Report and Recommendation*, dated Aug. 6, 2003. According to family members, the petitioner’s mother is a single parent of three children, who “did not feed them, nurture them, or enforce any rules or discipline.” *Id.* She is reported to be an alcoholic who had various men in the home during the petitioner’s childhood, and the record indicates serious incidents of abandonment and neglect. See *id.* Family members also report that the petitioner “was passed from relative to relative for the majority of her childhood.” *Id.*

The petitioner claims that she entered the United States without being inspected and admitted on or around May 15, 2002. See *Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant*. After arrival, the petitioner resided with extended family in Adams County. See *ACCYS Report and Recommendation*, dated Aug. 6, 2003. On or about June 2, 2003, ACCYS filed a dependency petition with the juvenile court on behalf of the petitioner because of a reported altercation with her custodial relatives in the United States. See *Juvenile Petition*. The juvenile court issued an order: (1) indicating that the petitioner’s “parents purportedly reside in Mexico;” (2) noting the petitioner’s fear that her custodial relatives would return her to Mexico; and (3) finding that the petitioner “is without proper parental care or supervision which is necessary for her physical, mental, emotional health or morals.” *Juvenile Court Order*, dated June 11, 2003. The juvenile court adjudicated the petitioner a dependent child, ordered the petitioner to remain in the custody of ACCYS, and placed her in foster care until a dispositional hearing. *Id.*

In preparation for the dispositional hearing, ACCYS filed a report and recommendation with the juvenile court setting forth information on the petitioner’s background and history of abandonment and neglect. *ACCYS Report and Recommendation, supra*. Upon reviewing this report, the juvenile court issued an order directing ACCYS to identify other family members in the area with a “permanency goal . . . of reunification with the closest family member that can be secured.” *Juvenile Court Order*, dated Aug. 19, 2003. In an updated report and recommendation, ACCYS indicated that the petitioner’s “biological parents continue to be absent from her life,” and that her mother’s “whereabouts are unknown.” *ACCYS Report and Recommendation*, dated Feb. 9, 2004. On June 28, 2004, the juvenile court issued an order granting custody of the petitioner to her maternal uncle [REDACTED] and closing the case. See *Juvenile Court Order*, dated June 28, 2004. The petitioner filed a petition for SIJ classification on November 17, 2004, when she was 16 years old. See *Form I-360, supra*.

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 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. *Id.* Here, the petitioner was found to be dependent on a juvenile court, and the juvenile court legally committed the petitioner to the custody of her uncle. *See Juvenile Court Orders, supra.* Second, the Act, as amended by the TVPRA, requires a finding that the petitioner’s reunification with one or both of her parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. The juvenile court necessarily found that reunification with one or both of the petitioner’s parents was not viable due to neglect and abandonment when it: recognized that the petitioner’s father’s whereabouts are unknown; found the petitioner to be without proper parental care and supervision; adjudicated the petitioner a court dependent; and ordered her to be placed in foster care and then in the custody of her uncle. *See id.* Further, the petitioner’s parental abandonment and neglect is amply supported by the evidence in the record. *See ACCYS Report and Recommendations, supra.* Finally, the juvenile court and ACCYS necessarily determined that it would not be in the petitioner’s best interest to be returned to Mexico, given the court findings and the administrative determinations discussed above. *See Juvenile Court Orders, supra; ACCYS Report and Recommendations, 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. *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 she is eligible for SIJ classification. Accordingly, the District Director’s decision will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.