

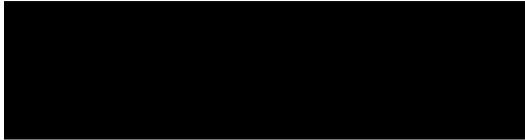


U.S. Citizenship
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FILE: [REDACTED] Office: SAN FRANCISCO, CALIFORNIA Date: JUL 09 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, 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 an 18-year-old native and citizen of Guatemala 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 Field Office Director issued a decision on January 12, 2009, denying the petition for SIJ classification finding that the petitioner was not eligible for the benefit. *See Decision of the Field Office Director*. Specifically, the Field Office Director found that the juvenile court's order was insufficient to establish eligibility for SIJ classification. *See id.* The Field Office Director also questioned the credibility of the petitioner's claim, and found that her testimony undermined her claim of abuse and neglect. *See id.*

On appeal, the petitioner, through counsel, contends that the Field Office Director erred in denying her petition for SIJ classification. *See Brief on Appeal*. The petitioner asserts that the juvenile court made all of the factual and legal findings required for SIJ classification, and that it was improper for the Field Office Director to challenge the factual findings of the state juvenile court. *See id.* The petitioner also contends that the Field Office Director's adverse credibility determination lacks merit. *See id.*

The record contains, *inter alia*, a copy of the petitioner's birth certificate; a declaration by [REDACTED] dated February 6, 2009; a declaration by [REDACTED] a foster family case worker with Alternative Family Services in Oakland, California, dated November 24, 2008; two declarations by [REDACTED], a child welfare worker for the Alameda County Social Services Agency, dated December 12, 2008, and February 12, 2009; a 12-page Disposition Report prepared by the Alameda County Social Services Agency for the Superior Court of California, County of Alameda (hereinafter "juvenile court"), dated November 27, 2007; an Order Regarding Eligibility for Special Immigrant Juvenile Status, filed by the juvenile court on April 15, 2008; an Alternative Family Services Treatment Plan/Quarterly Client Progress Summary, dated May 1, 2008; a Transitional Independent Living Plan & Agreement, dated September 16, 2008; a Child Welfare Services Case Plan Update, dated October 8, 2008; a 13-page Status Review Report prepared by the Alameda County Social Services Agency for the juvenile court, dated October 16, 2008; a Notice of Intent to Deny, dated November 13, 2008; a Response to the Notice of Intent to Deny, dated December 12, 2008; and a Brief on Appeal. 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 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 *TVPRA – SIJ Provisions Memo* at 1 (noting that most of the SIJ provisions of the TVPRA took effect on March 23, 2009).

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 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.” *TVPRA – SIJ Provisions Memo* at 3. Second, the TVPRA transferred the “specific consent” function, which applies to certain 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 record reflects that the petitioner was born on December 24, 1990, in San Juan Atitan, Huehuetenango, Guatemala. *See Birth Certificate for [REDACTED]*. The petitioner states that she is the youngest of twelve children, five of whom are deceased. *See Declaration of [REDACTED]*, *supra*; *Disposition Report, supra* at 5. The petitioner first attempted to enter the United States on November 6, 2004, when she was 13 years old. *See Form I-213, Record of Deportable/Inadmissible Alien*, dated Nov. 9, 2004. The petitioner claims that her mother sent her to the United States because she “felt that she was not able to take care of [the petitioner] or to protect [her] anymore.” *See Declaration of [REDACTED]*, *supra*. The petitioner also reports that her father was abusive toward her mother, and her mother “was afraid that he would hurt [the petitioner] when [the petitioner] tried to protect her from his violence.” *Id.* During her SIJ interview with USCIS, the petitioner stated that she came to the United States because she testified

¹ Note that 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).

in court against her sister's killer, and that she feared for her own life as a result. *See Decision of the Field Office Director, supra* at 4. The petitioner was ordered removed from the United States on December 17, 2004, *see Order of the Immigration Judge*, and she was removed to Guatemala on December 28, 2004, *see Form I-205, Warrant of Removal/Deportation*.

The petitioner claims that she reentered the United States without being inspected and admitted in February, 2005. *See Declaration of [REDACTED], supra; Form I-485, Application to Register Permanent Residence or Adjust Status*. After arrival, the petitioner lived with her older brother in Oakland, California. *See Declaration of [REDACTED] supra*. The petitioner's brother left the United States in December, 2006, and the petitioner was left with an abusive boyfriend who fathered her child. *See id.* After an incident of physical abuse in October, 2007, the petitioner and her child were removed from her home and placed into protective custody. *See id.; Status Review Report, supra* at 5.

The Alameda County Social Services Agency recommended to the juvenile court that the petitioner "be declared a dependent of the juvenile court, [and] that the parents be bypassed for reunification services based upon the fact that they have abandoned the minor inside the United States, and have not provided for her support." *See Disposition Report, supra* at 1. Specifically,

The parents have allowed the minor to travel outside of her home country without making arrangements for her protection and support. Once she arrived here, the minor became involved in a physically-abusive relationship with an adult male, became pregnant, and was forced to flee from the abuse once she gave birth to her child. Her older brother who traveled her[e] with her returned to Guatemala, leaving her in the care of the abusive boyfriend. Even though the parents are likely aware of the minor's situation, they continue to insist that she cannot return home, and have made no arrangements for such return . . .

Disposition Report, supra at 8. Although the petitioner "appear[ed] to have an emotionally-close bond with her parents," and called them regularly, she reported to the child welfare worker that "her parents have indicated they do not want her to return home, because they cannot care for her and her baby, and also because there would be problems with the baby's family." *Id.* at 5. On April 15, 2008, the juvenile court issued an order finding the petitioner under the jurisdiction of the juvenile court, deeming her eligible for long-term foster care, and determining that it was not in her best interest to be returned to Guatemala. *See Order Regarding Eligibility for Special Immigrant Juvenile Status, supra*. The juvenile court further determined that these findings were based on neglect and abandonment of the child. *Id.* The petitioner filed a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), and an Application to Register Permanent Residence or Adjust Status (Form I-485) on August 21, 2008. *See Forms I-360, I-485*.

Upon review, the AAO determines that the petitioner has established by a preponderance of the evidence that she is eligible for a grant SIJ classification under section 101(a)(27)(J) of the Act. First, the petitioner was declared dependent on a juvenile court. *See Order Regarding Eligibility for Special Immigrant Juvenile Status, supra*. Second, the juvenile court deemed the petitioner eligible

for long term foster care because family reunification is no longer a viable option. *See id.* Third, the juvenile court determined that it would not be in the petitioner's best interest to be returned to Guatemala. *See id.* Fourth, the juvenile court determined that all of the above findings were made by reason of neglect and abandonment of the petitioner. *See id.*

The juvenile court's findings of neglect and abandonment find ample factual support in the record. As noted above, the petitioner's parents allowed her to travel to the United States when she was 13 years old, and they failed to provide her with support or protection, even after she was left with an abusive boyfriend. *See Disposition Report, supra.* Additionally, the petitioner's parents indicated that they are unable and unwilling to care for her in Guatemala. *Id.*

Further, the evidence in the record does not show that the petitioner sought the dependency order or the best interest determination "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 . . . neglect or abandonment." *SIJ Memo #3, supra* at 2; *Declaration of [REDACTED] supra* (stating that she was initially unaware of any immigration benefits available to juveniles in foster care). Rather, the preponderance of the evidence in the record supports a finding that the juvenile court dependency order was sought by the Alameda County Social Services Agency to protect the petitioner from further neglect and abandonment. *See Disposition Report, supra; Status Review Report, supra.*

Finally, the evidence does not support the Field Office Director's adverse credibility determination. First, the juvenile court made a legal finding of neglect and abandonment under section 300(g) of California Welfare and Institutions Code. *See Disposition Report, supra* at 12; *Order Regarding Eligibility for Special Immigrant Juvenile Status, supra.* The reasonable factual basis for the court's ruling is clearly evident in the record, and there is no indication that the juvenile court made an uninformed decision. *See Disposition Report, supra.* Although during her SIJ interview the petitioner responded with a "no" when asked whether her parents abused, abandoned or neglected her, the juvenile petitioner was not responsible for making these legal determinations. *See* section 101(a)(27)(J)(i) of the Act; *SIJ Memo #3, supra* at 3; *see also TVPRA – SIJ Provisions Memo* at 3 ("During an interview, an officer should focus on eligibility for adjustment of status and should avoid questioning a child about the details of the abuse, abandonment or neglect suffered, as those matters were handled by the juvenile court, applying state law."). Second, the petitioner's emotional attachment to and contact with her family, *see Disposition Report, supra* at 5, is not inconsistent with the juvenile court's finding under California law that the petitioner's parents have neglected and abandoned her, *see* section 300(g) of California Welfare and Institutions Code (defining a court dependent as, among other things, a "child [who] has been left without any provision for support"). Third, to the extent that the petitioner was unclear regarding whether she thinks that her parents would make room for her in the family home if she returned to Guatemala, the petitioner consistently noted that her parents did not want her to return home because they cannot care for her. *See Disposition Report, supra* at 4, 5, 7; *Declaration of [REDACTED] z, supra; Declaration of [REDACTED]* dated Feb. 12, 2009. In sum, the consistent evidence in the record supports the juvenile court's dependency order.

Accordingly, the Field Office Director's decision will be withdrawn and the petition will be approved.

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 proven eligibility for the benefit sought.

ORDER: The appeal is sustained.