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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  
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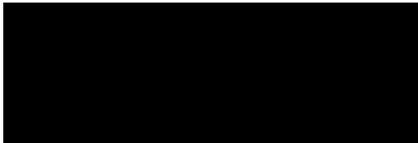


IN RE:



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:



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, 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 native and citizen of Ecuador 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's decision was based on an erroneous interpretation of the facts. On the Form I-290B, Notice of Appeal, filed on September 13, 2011, counsel indicated that she would be submitting a brief and/or additional evidence to the AAO within 30 days. To date, over a month later, we have received nothing further from counsel or the petitioner and consider the record complete.

The AAO reviews these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims on appeal and the relevant evidence of record fail to establish that the SIJ petition is bona fide and the appeal will be dismissed for the following reasons.

#### *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. 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.

Section 101(a)(27)(J) of the Act, as amended by section 235(d) of the TVPRA, 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;

(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 modified the former “express” consent required for SIJ petitions. 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 Field Office 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 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 Ecuador on March 28, 1992. In her November 16, 2009 affidavit, the petitioner recounted that she first came to the United States when she was two years old with her parents, two brothers and sister. Eleven years later, the petitioner stated that her father returned to Ecuador for work and she and her mother followed in December 2005, shortly after which her parents separated and she lost contact with her father. The petitioner recalled that her mother worked long hours and she spent a lot of time by herself. When her mother obtained a job that required her to work at different locations, the petitioner would go

with her or stay with a friend.<sup>1</sup> The petitioner explained that she went to three different schools because she did not like the first school she attended and had to leave the second school when her mother relocated for work. The petitioner stated, "I was telling my mother all the time that I wanted to come back to the United States, I didn't like it there, it was different, there was too much poverty . . . ." The petitioner further explained her decision to leave Ecuador:

I spoke to my mother and told her that I was going to take a vacation for a while in the United States, but I knew I was not going back to Ecuador. We had an argument and she told me that she hoped I never went back to Ecuador, that was very hard for me, three weeks later I traveled to the United States. In those three weeks she called [a] few times but never said anything trying to fix our differences.

I traveled to the United States 07/23/2009 and I just hope that I can finish school and go to college, I want to be a doctor someday and have a better life than the one I was pretty much forced to live.

The petitioner entered the United States on July 23, 2009 as a nonimmigrant visitor (B2), resided with her sister and enrolled in school. In December 2009, the petitioner's brother filed a petition for custody of the petitioner with the Superior Court of New Jersey, Somerset County, Chancery Division, Family Part (juvenile court). In his December 14, 2009 affidavit in support of the custody petition, the petitioner's brother stated that he was a lawful permanent resident of the United States and that when the petitioner returned to Ecuador with their mother, their mother worked long hours, did not have time to see the petitioner and the petitioner often changed schools due to their mother's employment. The petitioner's brother reported that he had been financially supporting the petitioner ever since she came back to the United States in July 2009 and that he would continue to support her because their mother was unable to provide her with adequate care in Ecuador.

On April 21, 2010, the juvenile court entered an order awarding custody of the petitioner to her brother and determining that: the petitioner had been abandoned and/or neglected by her natural parents; reunification with her parents was not viable due to neglect and abandonment, or a similar basis under section 9:6-1 of the New Jersey Statutes;<sup>2</sup> that it was not in the petitioner's

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<sup>1</sup> In her February 21, 2011 certification, [REDACTED] confirmed that she was the mother of the petitioner's schoolmate during the 2008 to 2009 school year and that the petitioner stayed at her home when her mother was travelling for work.

<sup>2</sup> Title 9, Chapter 6, Article 1 of the New Jersey Statutes Annotated (West 2011) states, in pertinent part:

Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child: (a) willfully forsaking a child; (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

best interests to return to Ecuador; and that it was in her best interest to remain in the United States.

The petitioner filed the instant Form I-360 on May 31, 2010 when she was 18 years old. The director denied the petition after reviewing counsel's response to a Notice of Intent to Deny (NOID) and counsel timely appealed.

*Analysis*

The petitioner bears the burden of proof to establish that her request for SIJ classification is bona fide and that she sought the juvenile court order primarily to obtain relief from her parents' 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 determined that the petitioner's request for SIJ classification was not bona fide because at an interview with a USCIS officer on August 18, 2010, the petitioner initially stated that she was living amicably with her mother in Ecuador until her mother suggested that she return to the United States to live with her older brother and sister. The director concluded that the petitioner sought the juvenile court order primarily to obtain lawful permanent residency in the United States rather than to gain relief from her parents' abuse, neglect or abandonment. On appeal, counsel asserts that the petitioner "did not state at the interview that she had amicable relations with her mother but that her mother had left her for months at a time without any care or supervision."

The record does not support counsel's assertion. In a sworn statement executed at her August 8, 2010 interview, the petitioner stated: "I left [Ecuador] because my mother was very busy with her work and I will get into a fight with her, and she said it will be better for me to be with my brother and sister in the United States and that she do not have enough time to take care of me." In her affidavit, the petitioner does not clearly describe her living situation with her mother. She stated: "My mother had a job . . . that made her go to different places all the time, I used to sleep at my friend[']s house sometimes or wherever she was working at the time. She would come once a month and bring me money that was all the connection I had with her."

Although the juvenile court order includes the requisite nonviability-of-reunification and best-interest determinations, the order contains no factual findings upon which those determinations

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\* \* \*

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

were made. The transcript of the court hearing submitted in response to the NOID shows that the petitioner's brother's attorney told the court that the petitioner came to the United States when she was two years old, returned to Ecuador in 2005 when her parents separated and she lost contact with her father. The attorney recounted that the petitioner had to change schools frequently when her mother moved for employment and "[s]o she came back up to the United States. She really wanted to stay here." The attorney explained to the court, "it's sort of a constructive abandonment theory" because the petitioner's mother was unable to properly care for her due to her frequent work-related relocations and she returned the petitioner to the United States to live with her older brother and sister. The court accepted the attorney's description of the petitioner's circumstances and asked her brother simply to verify the accuracy of the attorney's statements and only asked the petitioner if she consented to being placed in her brother's custody.

Other relevant evidence also indicates that the petitioner sought the juvenile court order primarily to obtain lawful permanent residency rather than relief from her mother's neglect and abandonment. On December 4, 2009, the petitioner's mother granted her son power of attorney to act on her behalf and sign any documents for the petitioner's benefit as long as the petitioner was present and compliant. The record also contains an undated letter from the petitioner's mother's employer certifying, at the request of the petitioner's mother, that because she worked as a cook at different oil field labor camps where the living conditions were not good for the petitioner, the petitioner was a student at a military high school. Rather than indicating neglect and abandonment, these documents show that the petitioner's mother purposefully placed the petitioner in her brother's care and sought documentation from her employer to support the petitioner's request for SIJ classification. When determining whether or not to consent to the grant of SIJ status, USCIS may consider any evidence of the role of a parent in arranging for the petitioner to travel to the United States or to petition for SIJ classification. *See Yeboah v. U.S. Dept. of Justice*, 345 F.3d 216, 225 (3d Cir. 2003) (making a credibility determination regarding conflicting evidence is within the agency's authority and not a reevaluation of the dependency order).

On appeal, counsel asserts that the petitioner "made it clear that it was [her] mother's neglect and abandonment of her duties as a mother that forced her to leave Ecuador." However, in her affidavit, the petitioner explicitly stated that she wanted to return to the United States because she was unhappy with her school and living situation in Ecuador. Although the petitioner indicated that she and her mother argued about her departure, the relevant evidence shows that while in Ecuador, the petitioner's mother financially supported the petitioner and her schooling and that the petitioner and her mother resided together most of the time. The record also establishes that her mother assisted in placing the petitioner in her brother's custody and obtained documentation to support her request for SIJ classification. Although the petitioner received the requisite juvenile court order, material evidence contradicts the court's finding of parental neglect and abandonment and demonstrates that the petitioner sought the order primarily to obtain lawful permanent residency in the United States. Consequently, the present record does not support the consent of USCIS to a grant of SIJ classification in this case, as required by section 101(a)(27)(J)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her 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.