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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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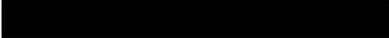


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Date: **SEP 15 2011**

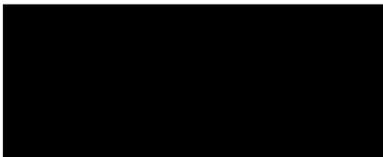
Office: HARTFORD, CT

FILE: 

IN RE: Petitioner: 

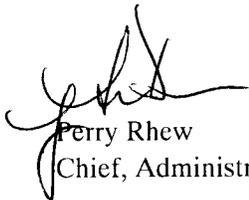
PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J)

ON BEHALF OF PETITIONER:



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.

Thank you,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Hartford, Connecticut Field Office Director 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 19-year-old citizen of Ecuador 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), and as defined at section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J).

The Field Office Director (the director) denied the petition for failure to submit the death certificate of the petitioner's father as requested.

On appeal, counsel asserts that copies of the death certificate were submitted below on three separate occasions.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Review of the entire record, as supplemented on appeal, demonstrates that the petitioner is eligible for classification as a special immigrant juvenile.

#### *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. 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) (hereinafter *TVPRA – SIJ Provisions Memo*). The SIJ provisions of the TVPRA are applicable to this case. *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 now 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 amended the SIJ definition by removing 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* TVPRA section 235(d)(1)(A).<sup>1</sup>

Additionally, the TVPRA modified the “express” consent formerly 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 USCIS, 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 or abandonment,” H.R. Rep. No. 105-405 at 130 (1997). Approval of an SIJ petition is evidence of the Secretary's consent. *TVPRA – SIJ Provisions Memo* at 3. The TVPRA also 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 (ICE), to the Secretary of Health and Human Services. TVPRA section 235(d)(1)(B).

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<sup>1</sup> 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).

*Pertinent Facts and Procedural History*

The applicant entered the United States without inspection and was apprehended by ICE on March 28, 2008. He was subsequently served with a Notice to Appear for removal proceedings and placed in the custody of the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services. On July 26, 2008, ORR released the petitioner to a licensed foster care giver. On June 2, 2009, the Regional Children's Probate Court of the Waterbury, Connecticut District ("juvenile court") entered a dependency order and granted temporary custody of the petitioner to the foster care giver. The court's order was based on its finding that the petitioner had been abandoned by his mother, that he was eligible for long term custodial care and that it was not in the petitioner's best interest to return to Ecuador. On October 29, 2009, the juvenile court appointed the foster care giver as the petitioner's guardian and removed the petitioner's mother as a guardian. The court's October 29, 2009 order affirmed its prior findings of abandonment and that it was not in the petitioner's best interest to return to Ecuador. The court further found that pursuant to a Connecticut State Department of Children and Families (DCF) investigation and report, the petitioner's father was deceased and his mother suffered from alcoholism and was incapable of caring for the petitioner.

The instant Form I-360 was filed on September 15, 2010, when the petitioner was 18 years old. With the Form I-360, counsel submitted copies of, *inter alia*, the juvenile court orders and the original and a certified English translation of the death certificate of the petitioner's father showing that he passed away on January 20, 1993 when the petitioner was four months old. Despite this initial submission of the petitioner's father's death certificate, the director again requested the petitioner to submit the certificate in a notice dated March 10, 2011. Counsel timely responded to the notice on April 7, 2011. Although counsel's cover letter indicated that a copy of the death certificate was included, his April 7, 2011 submission did not contain such a copy. Regardless of this omission, a notarized copy had already been filed with the Form I-360. Nonetheless, the director denied the petition on June 24, 2011 for lack of the certificate. On July 1, 2011, counsel again submitted a copy of the petitioner's father's death certificate with a letter requesting reconsideration of the denial. The director failed to reconsider his denial and counsel timely appealed. On appeal, counsel submits, for the third time, a copy of the petitioner's father's death certificate.

*Analysis*

The director erroneously determined, without analysis, that the petitioner was ineligible for classification as a special immigrant juvenile because he had not submitted a copy of his father's death certificate despite the fact that the petitioner properly submitted the certificate with his initial filing.

The director cited no other basis for denying the petition and we find no ground of ineligibility. The record contains the juvenile court dependency order explicitly finding that the petitioner's father is deceased, that the petitioner's reunification with his mother was not viable due to her

abandonment and that it would not be in the petitioner's best interest to be returned to his native country, Ecuador. The record contains additional, relevant and credible evidence providing a reasonable factual basis for the court's order.<sup>2</sup> The record lacks any basis to question the bona fides of the petitioner's request for special immigrant juvenile classification and the petitioner has established his eligibility for such classification pursuant to section 101(a)(27)(J) of the Act. The petition was denied in error and the director's decision will be withdrawn.

*Conclusion*

In this case, as in all visa petition 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). The petitioner has met his burden and the appeal will be sustained. The June 24, 2011 decision of the director will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained. The petition is approved.

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<sup>2</sup> Counsel submitted documentation that the underlying DCF report was confidential and could not be released by the juvenile court.