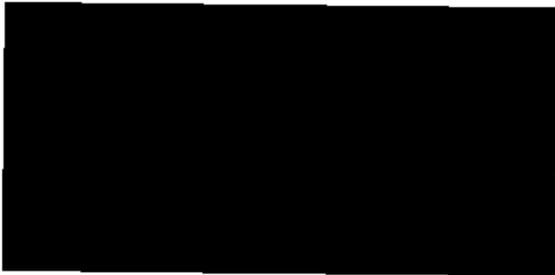


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



C1

DATE: **AUG 02 2012** Office: OMAHA, NEBRASKA FILE:

IN RE: Self-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:



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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Omaha, Nebraska (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 20-year-old citizen of Mexico 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 declined consent to grant SIJ status because she found the evidence did not establish that the petitioner sought the juvenile court order primarily to obtain relief from parental abuse, neglect, abandonment or a similar basis under state law. On appeal, counsel submits additional evidence and a brief reasserting the petitioner's eligibility and claiming that the director exceeded her authority by seeking to go behind the state court guardianship order.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, counsel's claims and the additional evidence submitted on appeal fail to overcome the ground for denial 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.¹ Section 101(a)(27)(J) of the Act 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

¹ 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*).

(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[.]

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through a U.S. Citizenship and Immigration Services (USCIS) Field Office Director, to consent to the grant of special immigrant juvenile status. This consent determination “is an acknowledgement that the request for SIJ classification is bona fide,”² meaning that neither the juvenile court 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).³

Pertinent Facts

The petitioner was born on June 6, 1992 in Mexico to [REDACTED]. On the Form I-360, the petitioner indicated that she entered the United States without inspection sometime after her birth in 1992. On May 11, 2011, the Probate Division of the Douglas County Court in Omaha, Nebraska appointed [REDACTED] as the petitioner’s permanent guardian. The court found that: the petitioner’s mother did not appear at the hearing and had voluntarily relinquished custody of the petitioner and consented to [REDACTED] guardianship; the petitioner’s father had abandoned the petitioner during her early childhood and his whereabouts were unknown; “reunification with one or both of the [petitioner’s] parents is not viable due to said relinquishment and abandonment;” and that it was not in the petitioner’s best interest to return to Mexico.

The petitioner filed this Form I-360 on May 18, 2011 when she was 18 years old. The director subsequently issued a request for evidence (RFE) of the court hearing on May 11, 2011 resulting in the guardianship order. Counsel timely responded with a letter brief, a copy of a USCIS policy memorandum and a copy of a recommendation from the Citizenship and Immigration Services Ombudsman regarding SIJ adjudications. Counsel asserted that the RFE was

² *TVPRA – SIJ Provisions Memo, supra* n.1 at 3.

³ *See Id.* at 3 (“An approval of an SIJ petition itself shall be evidence of the Secretary’s consent.”). *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) (hereinafter *SIJ Memo #3*) at 2 (“consent is an acknowledgement that the request for SIJ classification is bona fide.”).

“unnecessary and unduly burdensome” on the petitioner and that the director was inappropriately attempting to adjudicate the guardianship order, rather than the SIJ petition. The director found counsel’s response insufficient to establish the petitioner’s eligibility and declined to consent to the grant of SIJ status. 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 court order primarily to obtain relief from parental 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. In her denial decision, the director stated that during an interview, the petitioner declined to explain why her mother relinquished custody of the petitioner just three weeks before her nineteenth birthday. The director also noted that the guardianship order did not find that the petitioner’s mother had abandoned, abused or neglected the petitioner, but simply stated that her mother relinquished custody three weeks before the petitioner reached the age of majority in Nebraska. On appeal, counsel claims the director erroneously focused on the petitioner’s age and exceeded her authority by seeking to “adjudicate the facts of the guardianship order de novo.” While the director’s comments regarding the petitioner’s age at the time of the guardianship order were unnecessary, we find no error in her ultimate determination that the agency’s consent is not warranted in this case.

When deciding whether to consent to the grant of SIJ status, USCIS is limited to adjudicating the SIJ petition based on the record of proceeding before the agency. USCIS’s authority does not extend to dependency, commitment or custody determinations within the jurisdiction of state juvenile courts. *See* H.R. Rep. No. 105-405, at 130. Nonetheless, to grant consent and determine that the request for SIJ classification is bona fide, USCIS must ensure that the record provides a reasonable factual basis for the court order.⁴ Orders that include or are supplemented by specific findings of fact are generally sufficient, but where such orders are deficient, USCIS may request additional evidence of the records underlying the court order or other relevant evidence establishing the factual basis for the order.⁵

On appeal, counsel asserts that the court order in this case established the petitioner’s eligibility by a preponderance of the evidence and the director’s request for the guardianship hearing transcript “was unnecessary and unduly burdensome” on the applicant because such records are sealed. The record does not support counsel’s assertions. While the court order in this case contains the requisite determinations of custody, best-interest and non-viability of reunification due to abandonment, the order does not contain the specific findings of fact upon which it was based. Without such factual findings in the order itself or contained within other, relevant evidence, a court order that merely repeats the language of the statute is insufficient to establish a petitioner’s eligibility.

⁴ *SIJ Memo #3* at 4-5.

⁵ *Id.* at 5. *See also* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981-82 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. §§ 204.11, 205.1, 245.1) (discussing the types of evidence that may be considered when making the consent determination).

Apart from the guardianship order and the applicant's birth certificate, counsel submitted no other relevant evidence below. On appeal, counsel submits an affidavit from the petitioner in which she affirms: "I was the subject of a guardianship order because I was a minor child, because I was abandoned and relinquished by my parents, and [I] did not seek the guardianship primarily for purposes of immigration status." The petitioner does not further discuss the circumstances leading to the guardianship. In her affidavit submitted on appeal, [REDACTED] the petitioner's guardian, briefly explains that the petitioner was appointed a guardian because her father abandoned her when she was very young, her mother relinquished her because she was planning to return to Mexico, the petitioner had endured family strife and abuse that is painful for her to discuss and she needed a guardian's assistance in obtaining health care and continuing her education. [REDACTED] does not summarize her testimony or that of other witnesses, if any, before the court. Even if [REDACTED] brief statements provide a reasonable factual basis for the guardianship order, the record still lacks evidence that the same facts recited by [REDACTED] on appeal were presented to the court and formed the basis for the guardianship order.

On appeal, counsel cites no confidentiality rules preventing the release of court records related to the guardianship proceedings or otherwise document her good-faith attempts to obtain the hearing transcript or other pertinent records. Counsel also fails to provide any other relevant evidence such as, for example, the original petition for guardianship, any separate findings of fact accompanying the order or other documentation summarizing the evidence presented to the court.⁶ Without such evidence, the present record does not demonstrate that the court order was sought primarily to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law,⁷ and not primarily to obtain lawful permanent residency in the United States.

Conclusion

Although the petitioner obtained the court order and determinations required by subsections 101(a)(27)(J)(i) and (ii) of the Act, the record lacks sufficient evidence providing a reasonable factual basis for that order. Consequently, the present record does not warrant consent to a grant of SIJ classification in this case, as required by subsection 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.

⁶ See *SIJ Memo #3* at 5; 76 Fed. Reg. at 54981-82.

⁷ On appeal, counsel also asserts that relinquishment of parental custody under Nebraska law is similar to abuse, neglect, or abandonment and that the petitioner is consequently eligible for SIJ classification based on the non-viability of reunification with both of her parents. Because the record lacks evidence providing a reasonable factual basis for the court order and the agency's consent in this case, we do not reach the issue of whether or not relinquishment in Nebraska is "a similar basis" to abuse, neglect or abandonment for purposes of section 101(a)(27)(J)(i) of the Act.