

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

C6



FILE:



Office: SEATTLE

Date: APR 17 2009

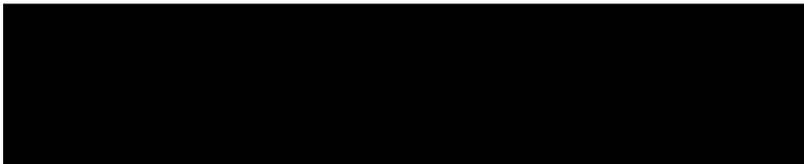
IN RE: Petitioner:

Beneficiary:



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 (TVPR), 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, Seattle, 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 5, 2009, denying the petition for special immigrant juvenile (SIJ) status because of inconsistent evidence in the record regarding the status of the petitioner's mother. Specifically, the Field Office Director found that the petitioner's claim that his mother died in 2001 was inconsistent with the information recorded by a United States Border Patrol Agent on the *Record of Deportable/Inadmissible Alien* (Form I-213) after the petitioner's apprehension in 2005. The Form I-213 indicates that the petitioner lived with his mother before departing Guatemala, and that petitioner's mother arranged to smuggle him into the United States. Additionally, the Field Office Director concluded that an investigation by the United States Embassy in Guatemala revealed that the Citizenship Registry of the Guatemalan Supreme Electoral Court "presumed" that the petitioner's mother is "alive for electoral purposes," and that the parental death certificates submitted by the petitioner in support of his claim did not constitute legal evidence of his parents' death.

On appeal, the petitioner, through counsel, contends that the Field Office Director erred in denying his SIJ petition. First, the petitioner asserts that he did not tell immigration officials in 2005 that he lived with his mother before departing Guatemala, or that she arranged his travel to the United States. *See Notice of Appeal* dated February 4, 2009. Second, the petitioner contends that he has provided substantial evidence that his mother disappeared in 2001, and is presumed to be dead, and that his father died in 2002. *See id.* Third, the petitioner states that the information from the United States Embassy in Guatemala does not shed any light on whether or not his parents are deceased. *See id.* Finally, the petitioner contends that the Field Office Director's decision violates immigration regulations, Ninth Circuit precedent, and his due process rights because he was not provided an opportunity to inspect the adverse information or to cross-examine the adverse witnesses, and he was not provided with notice or an opportunity to respond to the information from the United States Embassy. *See id.*

The record contains an Order of Dependency and Temporary Dispositional Order from the Superior Court of Washington, Mason County Juvenile Court (Dependency Order), dated May 19, 2008; the petitioner's declaration; the petitioner's birth certificate; a death certificate for [REDACTED], the petitioner's father; a death certificate for [REDACTED], the petitioner's mother; the petitioner's response to the Notice of Intent to Deny; the petitioner's supplemental declaration; a declaration from [REDACTED] the petitioner's paternal uncle; and a notarized statement from [REDACTED] the petitioner's paternal aunt. The record also contains evidence and information submitted in support of the petitioner's defensive asylum application, including a January 19, 2009 mental health evaluation of the petitioner; a pre-hearing statement, a notarized statement from [REDACTED], the petitioner's paternal grandfather; a declaration from [REDACTED]

the petitioner's paternal aunt; and a letter from the Director of the John F. Kennedy elementary school in San Pedro Soloma, Department of Huehuetenango, Guatemala, attended by the petitioner's sister. The entire record was considered in rendering a decision on the current appeal.

USCIS notes that although the petitioner indicated that he would file a brief and/or additional evidence with the AAO within 30 days of filing the appeal, as of this date, the record does not contain any additional evidence. Therefore, the record is considered complete, and the AAO shall render a decision based on the evidence before it at this time.

Section 203(b)(4) of the Act provides classification to qualified special immigrant juveniles as described in section 101(a)(27)(J) of the Act, 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), which pertains to 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;

The petitioner has shown, by a preponderance of evidence, that he meets the eligibility criteria for special immigrant juvenile status. The petitioner's Dependency Order declares him to be dependent on the Washington state juvenile court due to years of neglect, abuse and frequent abandonment by his parents before they died. *See Dependency Order*, dated May 19, 2008. The Dependency Order found that there is no parent or guardian available to care for the child, and declared that it is not in the petitioner's best interest to be returned to Guatemala because of the severe abuse, neglect and abandonment he suffered, and the lack of a parent or guardian to care for and protect him in Guatemala. *See id.* The juvenile court's findings of abuse, neglect and abandonment are supported by the evidence in the record. The petitioner's declaration describes his parents' abuse of alcohol,

and the attendant homelessness, abandonment, hunger, violence, and physical abuse. *See Petitioner's Declaration*, dated Aug. 17, 2007. The information relayed in the petitioner's mental health evaluation corroborates the history of abuse and abandonment. *See Mental Health Evaluation*, dated Jan. 19, 2009. Additionally, the declarations from relatives [REDACTED] and [REDACTED] state that the petitioner's parents were alcoholics.

The Field Office Director correctly found that the information recorded in the petitioner's Form I-213 contradicts the petitioner's claim that his mother disappeared in 2001, and that she is presumed to be dead. However, the petitioner has submitted evidence disputing the accuracy of the information recorded in the Form I-213. Specifically, in his supplemental declaration, the petitioner describes being questioned by several immigration officers at two different stations, who "were coming in and out of the room, drinking coffee and talking and laughing with other personnel that worked in the offices." *See Petitioner's Supplemental Declaration*, dated Oct. 31, 2008. The petitioner declares that he told the officers that his parents were deceased, that an uncle had paid a coyote to bring him to the United States, and that he and his sister lived with an aunt before leaving Guatemala. *See id.* The petitioner states that he does not remember telling the officers that he lived with his mother, or that his mother paid a smuggler, because these statements were not true. *See id.*

Moreover, the preponderance of the evidence in the record indicates that the petitioner's parents are dead, and that the petitioner and his sister resided with his aunt before he left Guatemala. In addition to the petitioner's two declarations, which state that his mother died in 2001, and his father died in 2002, the declaration of uncle [REDACTED] the notarized statement from aunt [REDACTED] the declaration from aunt [REDACTED], the notarized statement from grandfather [REDACTED], and the letter from the Director of the John F. Kennedy elementary school in the Department of Huehuetenango, Guatemala, all indicate that the petitioner's parents are deceased.

Finally, the petitioner's contention that the Embassy investigation into the parental death certificates does not undermine his claim that his parents are deceased has merit. The documents indicate that [REDACTED] the petitioner's uncle, requested certified death certificates from the Civil Registry of San Pedro Soloma, Department of Huehuetenango, in 2005. [REDACTED] states in his declaration that he obtained these documents at the behest of the U.S. Office of Refugee Resettlement. *See [REDACTED] Declaration*, dated Oct. 31, 2008. Both documents state that the Civil Registrar, "thoroughly searched for" the death certificates in the Civil Registry, but they were "impossible to locate." The author of the Embassy investigative report contacted the Civil Registrar and confirmed that the documents were legitimate. Although the investigative report states that the documents were considered to be "negative certificates," their existence does not necessarily negate the evidence of the petitioner's parents' deaths. Rather, the documents are "negative certificates" because they were prepared after "the Civil Registrar performed a through search of the death records registered at this location, and did not find any corresponding to" petitioner's parents. The fact that the deaths of the petitioner's parents were not recorded by the Civil Registrar in Huehuetenango, however, does not establish that the petitioner's parents are alive. Further, the fact that the Citizenship Registry of the Guatemalan Supreme Electoral Court "presumed" that the petitioner's mother is "alive for electoral purposes," because the Registry "has not received official

notification from the corresponding registries of her decease,” does not necessarily contradict the evidence of the petitioner’s mother’s death. Finally, the investigative report does not negate the evidence in the record that the petitioner was subjected to serious abuse, abandonment and neglect by his parents. *See, e.g., Mental Health Evaluation*, dated Jan. 19, 2009; *Petitioner’s Declaration*, dated Aug. 17, 2007; and *Dependency Order*, dated May 19, 2008.

Upon review, the petitioner has established by a preponderance of the evidence that he meets the requirements for a grant special immigrant juvenile status under section 101(a)(27)(J)(iii) of the Act, as amended by section 235(d) of the TVPRA. Accordingly, the Field Office Director’s decision will be withdrawn and the petition will be approved. In light of this decision, the AAO declines to review the petitioner’s contentions that the Field Office Director’s decision violated immigration regulations, Ninth Circuit precedent, and his due process rights.

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). The issue “is not one of discretion but of eligibility.” *Matter of Polidoro*, 12 I&N Dec. 353, 354 (BIA 1967). In this case, the petitioner has proven eligibility for the benefit sought.

**ORDER:** The appeal is sustained.