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Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: ANCHORAGE Date: JUN 0 4 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:

[redacted]

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).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Anchorage, denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an 15-year-old native and citizen of El Salvador 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 June 4, 2008, denying the petition for special immigrant juvenile (SIJ) classification, finding that the petition was not bona fide. Specifically, the Field Office Director did not consent to the grant of SIJ classification because the petitioner failed to show that the juvenile court order was sought primarily for the purpose of obtaining relief from abuse, neglect, or abandonment, rather than for an immigration benefit. The Field Office Director found that the petitioner entered the United States in order to join his parents in Anchorage, and that his parents' inability to obtain legal authorization to work in the United States did not demonstrate neglect. Additionally, the Field Office Director found that the juvenile court order did not determine that family reunification was not a viable option for the petitioner.

On appeal, the petitioner, through counsel, contends that the Field Office Director erred in denying his SIJ petition. First, the petitioner asserts that the juvenile court's modified guardianship order made all of the required findings for SIJ classification, including a finding of neglect, and that USCIS should fully defer to the juvenile court's order. Specifically, the petitioner contends that the Field Office Director erred in determining that there was no finding that family reunification was not a viable option for the petitioner. Second, the petitioner claims that the Field Office Director's denial of "express consent" to the dependency order serving as a precondition to a grant of SIJ status violates a federal court injunction covering the "specific consent" function.[1]

The record contains, *inter alia*, a Verification of Release Form from the U.S. Department of Health and Human Services Office of Refugee Resettlement's Division of Unaccompanied Children's Services, dated June 23, 2006, releasing the petitioner into the care and custody of [redacted] Alaskan state court forms providing parental consent to the appointment of a guardian for the petitioner, signed by the petitioner's parents on February 27, 2007; a Petition for Guardianship filed by [redacted], dated May 25, 2007; Findings and Order of Guardianship issued by the Superior Court for the State of Alaska on October 17, 2007; a modified Findings and Order of Guardianship issued by the Superior Court for the State of Alaska on May 5, 2008; and a brief in support of the 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

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[1] In his Notice of Appeal, the petitioner contends without explanation that USCIS incorrectly applied 8 C.F.R. § 101(a)(15)(P)(j) [sic]. *See Form I-290B, Notice of Appeal*, filed July 3, 2008. This contention is not discussed in the petitioner's brief, and will not be addressed on appeal. The AAO also will not address the petitioner's mother's eligibility, *vel non*, for Temporary Protected Status because that issue is not before the AAO in this appeal.

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) (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." *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 TVPRA section 235(d)(1)(A)*; *TVPRA – SIJ Provisions Memo* at 2.[2] 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—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 the SIJ benefit was not '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.'" *TVPRA – SIJ Provisions Memo* at 3 (quoting H.R. Rep. No. 105-405 at 130 (1997)); *cf.* 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, 200aq4) at 2 (available at http://www.uscis.gov/files/pressrelease/SIJ_Memo_052704.pdf) (quoting same legislative history) (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 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 attempted to enter the United States with his older sister on June 3, 2006. *See Decision of the District Director, supra; Form 1-360 Petition for Amerasian, Widow(er) or Special Immigrant; Appeal Brief* at 1. On June 23, 2006, the petitioner was released from custody into the care of his aunt who resided in Anchorage, Alaska. *See Verification of Release Form, supra.* On February 27, 2007, the petitioner's parents executed Alaskan state court forms providing parental consent to the appointment of as a

[2] 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).

guardian for the petitioner. *See Forms PG-615, Parent's Consent to Appointment of a Guardian, supra.* In her consent form, the petitioner's mother stated that she was not a U.S. citizen and "cannot adequately support" the petitioner because she did "not have work authorization" and did "not have work skills other than a housewife." *Id.* (signed by in Anchorage, Alaska). Similarly, the petitioner's father stated that he was not a U.S. citizen and did not have work authorization. *Id.* (signed by in Anchorage, Alaska). The petitioner's father stated that if he was "returned to El Salvador [he] can only work for $4/day as a laborer," and he "cannot provide for [the petitioner] adequately." *Id.* In the Petition for Guardianship, the petitioner's paternal aunt stated that the petitioner's parents "currently reside in Anchorage, Alaska, but are unable to care for" the petitioner because they "are not permanent residents of the United States and do not have authorization to accept employment in the United States." *See Petition for Guardianship*, dated May 25, 2007. further stated that the petitioner's parents cannot provide for him financially, they cannot provide for his educational or medical needs, and that there are no remaining family members in El Salvador to care for him. *Id.*

On October 17, 2007, the Superior Court for the State of Alaska issued a guardianship order appointing as the petitioner's legal guardian. *See Findings and Order of Guardianship,* dated Oct. 17, 2007. The state court issued a modified order on May 5, 2008. *See Findings and Order of Guardianship,* dated May 5, 2008. The court: (1) found that the petitioner was dependent upon the juvenile court by virtue of being in need of an appointed guardian; (2) determined that he was eligible for long-term foster care due to the circumstances described in the petition including the fact that his biological parents could not care for him; (3) suspended all parental rights of custody due to the circumstances described in the guardianship petition, which constitute neglect; and (4) held that it was not in the petitioner's best interest to return to El Salvador. *Id.* The petitioner indicates that his father was removed to El Salvador in 2008. *See Appeal Brief* at 2.

The petitioner contends that the juvenile court made all of the requisite findings for SIJ classification, including a finding of neglect. The petitioner further contends that the Field Office Director erred in determining that the juvenile court's findings were insufficient. The petitioner is correct that the juvenile court made all of the findings required for SIJ classification, and that the Field Office Director erred in determining otherwise.

Although the state court's guardianship order reflects the findings required by section 101(a)(27)(J) of the Act, as explained above, the consent of the Field Office Director is also required for SIJ classification. The record supports the Field Office Director's denial of consent to the grant of SIJ classification based on a determination that the petitioner's request for SIJ classification was not bona fide. Specifically, the evidence in the record suggests that the petitioner came to the United States to be reunited with his parents. For example, 20 days after his arrival, the petitioner was released from custody to a paternal aunt who resided in the same city as the petitioner's parents. *See Petition for Guardianship, supra; Verification of Release Form, supra.* Additionally, the allegation and finding of neglect is based on the petitioner's parents' lack of legal immigration status in the United States. *See Forms PG-615, Parent's Consent to Appointment of a Guardian, supra.; Petition for Guardianship, supra.* Given this record, the petitioner has not met his burden of showing by a

preponderance of the evidence that the juvenile court order was sought primarily for the purpose of obtaining relief from abuse or neglect or abandonment, rather than for the purpose of obtaining an immigration benefit. *See TVPRA – SIJ Provisions Memo, supra.* at 3; *SIJ Memo #3, supra.* at 2.

Because the Field Office Director did not deny SIJ classification to the petitioner on the basis of a lack of "specific consent" to juvenile court jurisdiction, the petitioner's contention that the denial violates the United States District Court for the Central District of California's injunction in *Perez-Olano v. Gonzalez*, lacks merit. *See id.*, 248 F.R.D. 248, 267 (C.D. Cal 2008) (permanently enjoining the Department of Homeland Security from requiring specific consent before an immigrant minor in federal custody may seek a SIJ-predicate order in state court if that order will not alter the minor's custody status or placement).

In visa petition proceedings, the burden of proof is on the petitioner 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 not proven eligibility for the benefit sought.

ORDER: The appeal is dismissed