

**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

PUBLIC COPY

C6

FILE:

Office: CLEVELAND, OHIO

Date: OCT 30 2009

IN RE:

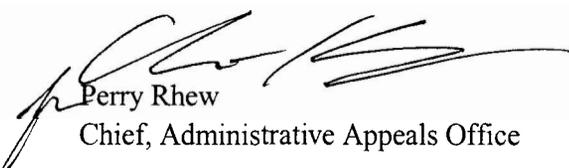
PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Cleveland, Ohio, revoked the approval of the special immigrant visa petition. The decision was certified to the Administrative Appeals Office (AAO) for review. The decision of the Field Office Director will be affirmed.

The petitioner is a 20-year-old native and citizen of Albania who was granted classification as a special immigrant juvenile (SIJ) on November 27, 2007, pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4). On February 18, 2009, the Field Office Director issued a Notice of Intent to Revoke approval of the SIJ petition pursuant to the authority set forth in 8 C.F.R. § 205.2 (revocation on notice). The petitioner, through counsel, filed a response to the Notice of Intent to Revoke on April 21, 2009. The Field Office Director found the response insufficient to establish the petitioner's eligibility, and notified the petitioner of the revocation of the approval of the SIJ petition on August 13, 2009. The Field Office Director also certified the revocation decision to the AAO for review pursuant to 8 C.F.R. § 103.4. On certification, the petitioner submits a brief and several documents in support of the SIJ petition.

The AAO reviews these proceedings de novo. *See* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”). The entire record was considered in rendering a decision.

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 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*).¹ The SIJ provisions of the TVPRA are applicable to this proceeding. *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, as amended by section 235(d) of the TVPRA, describes a “special immigrant” as:

an immigrant who is present in the United States—

¹ The TVPRA – SIJ Provisions Memo is available at http://www.uscis.gov/files/nativedocuments/TVPRA_SIJ.pdf.

- (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 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). 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).² Third, the TVPRA provides age-out protection to SIJ petitioners so that after December 23, 2008, a petition for SIJ classification 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). U.S. Citizenship and Immigration Services (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.

² U.S. Citizenship and Immigration Services 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).

Additionally, the TVPRA modified the two forms of consent—formerly “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). 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 interests determination were “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residen[ce], 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)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. TVPRA section 235(d)(1)(B).

The petitioner claims that she entered the United States with her mother, [REDACTED] on or around November 10, 2001. *See Form I-213, Record of Deportable/Inadmissible Alien*. The petitioner and her mother came to the attention of immigration authorities during the removal proceedings of the petitioner’s father, [REDACTED]. *Id.* The petitioner was served with a Notice to Appear for removal proceedings on July 28, 2004. *See Form I-862, Notice to Appear*. Service records reflect that the petitioner’s father was removed from the United States on November 6, 2006.

On November 16, 2006, the Cuyahoga County, Ohio Juvenile Court (hereinafter juvenile court) granted an “Order of Dependency, Abuse, and Neglect.” *See Juvenile Court Order*. The court found:

- (1) [REDACTED] (born 11/27/1988 in Fier, Albania) to be a ward of the court; (2) her return to Albania (his [sic] previous residence) is not in his [sic] best interests; (3) family reunification is no longer viable; (4) legal custody is granted to [REDACTED]; (5) [REDACTED] entered the United States without inspection (EWI) through Chicago on 11/10/2001 and she is currently out of status; (6) that this proceeding is a Dependency Proceeding; and (7) that [REDACTED] is determined by this court to be eligible for long term foster care due to abuse or neglect.

Id. The petitioner filed a request for SIJ classification with USCIS on December 1, 2006, when she was 18 years old. *See Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant*.

³ SIJ Memo #3 is available at http://www.uscis.gov/files/pressrelease/SIJ_Memo_052704.pdf.

Based on the juvenile court's order, USCIS approved the petition for SIJ classification on November 27, 2007. *Id.*

On March 6, 2008, the petitioner attended immigration court proceedings with her mother, and confirmed on the record that they lived together. The Field Office Director confirmed through public and commercial records that the petitioner resided with her father before his removal in 2006, and that she has continuously resided with her mother. *See Notice of Intent to Revoke.* The Field Office Director also found no evidence that the petitioner and her appointed guardian have ever lived at the same address. *Id.* Based on the evidence that the petitioner resided with her mother, and lack of evidence that she resided with her court-appointed custodian, the Field Office Director issued a Notice of Intent to Revoke approval of the SIJ petition. *Id.* The Notice provided the petitioner with an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation. *Id.* USCIS also directed the petitioner to provide copies of her juvenile court pleadings and records, school records indicating the petitioner's address, and evidence that the petitioner resided with her court-appointed guardian. *Id.*

In response to the Notice of Intent to Revoke, the petitioner stated that she continued to be a ward of the juvenile court based on the juvenile court's dependency order. *See Response to Notice of Intent to Revoke.* The petitioner further contended that because the juvenile court's order satisfied all of the requirements for SIJ classification, and because the order had not been terminated or revoked, USCIS should not revoke the approval of the SIJ petition. *Id.* Finally, the petitioner provided an affidavit from counsel stating that the juvenile court informed counsel that it would not issue a letter or order in response to the Notice of Intent to Revoke. *See Affidavit of* [REDACTED]. No further documentation or evidence was submitted.

The Field Office Director issued a final revocation of the SIJ approval on August 13, 2009, finding that the evidence did not support a grant of SIJ classification. *See Notice of Revocation and Certification.* Specifically, the Field Office Director found that the petitioner's continuous residence with her mother undermined her claim of abuse, abandonment, neglect, and non-viability of family reunification. *See id.* Further, the Field Office Director determined that the record did not reveal the factual basis for the juvenile court's findings, and the evidence suggested that the dependency order was sought primarily for the purpose of obtaining lawful permanent resident status. *Id.*

On certification, the petitioner asks the AAO to recognize that the juvenile court's order made the requisite findings for SIJ classification. *See Brief in Support of I-360 Petition.* The petitioner concedes that she has lived with her mother but contends that since her mother "considered her deportation to be imminent, the [juvenile court] determined that family reunification was no longer viable, and that Petitioner would be subject to neglect." *Id.* The petitioner also submitted a copy of a Certificate of Title, indicating that a vehicle belonging to [REDACTED] was transferred to [REDACTED] on December 6, 2006, and a Renewal of Apartment Lease dated February 26, 2009, showing the petitioner and [REDACTED] as joint tenants.

The petitioner correctly contends that the juvenile court's dependency order reflects the findings required by section 101(a)(27)(J) of the Act. However, as explained above, the consent of the Field Office Director is also required for SIJ classification. *See* section 101(a)(27)(J)(iii) of the Act. Here, the record supports the Field Office Director's determination that consent to the grant of SIJ classification is not warranted based on a finding that the petitioner's request for SIJ classification was not bona fide.

Specifically, the evidence in the record indicates that the petitioner came to the United States with her mother, in order to be reunited with her father. *See Form 1-213, supra; Notice of Intent to Revoke*. After her arrival, the petitioner resided with her father before he was removed in 2006, and the petitioner has continuously resided with her mother. *See Notice of Intent to Revoke*. The record contains no factual evidence to support a finding of abuse, neglect, or abandonment. *See SIJ Memo #3, supra* at 4 (“[C]onsent should be given only if the adjudicator is aware of the facts that formed the basis for the juvenile court's rulings on dependency (or state custody), eligibility for long-term foster care based on abuse, neglect, or abandonment, and non-viability of family reunification, or the adjudicator determines that a reasonable basis in fact exists for these rulings.”). Given this record, the petitioner has not met her 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, neglect or abandonment, rather than for the purpose of obtaining an immigration benefit. *See id.* at 2; *see also TVPRA – SIJ Provisions Memo, supra* at 3.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the petitioner has not proven eligibility for the benefit sought.

ORDER: The Field Office Director's decision of August 13, 2009, is affirmed.