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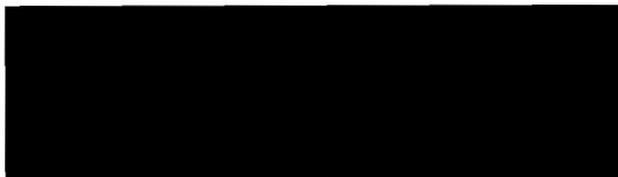
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FILE: [REDACTED] Office: SAN FRANCISCO, CALIFORNIA Date: **SEP 22 2009**

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:



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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California, 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 17-year-old native and citizen of Mexico 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 denied the petition for SIJ classification finding that the petitioner was ineligible for the benefit. *See Decision of the Field Office Director*, dated Jan. 5, 2009. On appeal, the petitioner contends through counsel that USCIS erred in denying her petition for SIJ classification. *See Brief on Appeal*, dated Mar. 4, 2009.

The record contains, *inter alia*, a copy of the petitioner's birth certificate; a Letter of Guardianship issued by the Superior Court of the State of California, County of San Mateo (hereinafter "juvenile court") on August 22, 2001; a Motion for Factual Findings filed with the juvenile court on March 19, 2008; two Declarations by petitioner's grandmother [REDACTED]; an Order Establishing Minors' Eligibility for Special Immigrant Juvenile Status, issued by the juvenile court on April 18, 2008; two letters from the petitioner's mother releasing custody of her daughters to [REDACTED] and a Brief on 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 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* 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—

- (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 located in the United States.” *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 id.*¹ 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—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

¹ 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).

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 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 residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.” See 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 (available at http://www.uscis.gov/files/pressrelease/SIJ_Memo_052704.pdf) (quoting H.R. Rep. No. 105-405 at 130 (1997) (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 was born in Mexico on November 5, 1991, to [REDACTED] and an unnamed father. See *Birth Certificate for [REDACTED]*. In or around 1999, the petitioner and her younger sister entered the United States without being inspected or admitted, to live with their maternal grandmother [REDACTED]. See *Declaration of [REDACTED]* dated Apr. 16, 2008. On August 22, 2001, the Superior Court of the State of California, in the County of San Mateo, issued a Letter of Guardianship, appointing the petitioner’s grandmother as her guardian. See *Letter of Guardianship, supra*. In or around 2005, the petitioner returned to Mexico to live with her mother. See *Declaration of [REDACTED] supra*. On April 13, 2006, the petitioner’s mother was arrested in Argentina and charged with drug trafficking. See *Letter from the Mexican General Directorate of Protection and Consular Matters to [REDACTED]* dated Feb. 12, 2007. After her mother’s arrest, the petitioner lived alone in Mexico, and supported herself by working at a flea market. See *Declaration of [REDACTED]*, dated Mar. 2, 2009. In or around February or March 2007, the petitioner again entered the United States without being inspected or admitted, to live with her grandmother. See *id.*; see also *Form I-485, Application to Register Permanent Residence or Adjust Status*, filed Sept. 11, 2008.

On March 19, 2008, the petitioner, through counsel, filed a motion with the juvenile court, seeking factual findings which would support a petition for SIJ classification. See *Motion, supra*. The juvenile court entered an Order Establishing Minors’ Eligibility for Special Immigrant Juvenile Status on April 18, 2008. See *Order, supra*. The Order noted that juvenile court appointed [REDACTED] as the petitioner’s guardian on August 22, 2001, and stated that the petitioner remained under the Court’s jurisdiction. *Id.* The juvenile court found that the petitioner was eligible for long-term foster care due to abandonment because the petitioner’s “mother is detained indefinitely in prison in Argentina and [she does] not know [her] father.” *Id.* Finally, the juvenile court found that it was not in the petitioner’s best interest to be returned to Mexico, and that it was in her best interest to remain in the United States. *Id.* The petitioner filed a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), and an Application to Register Permanent Residence or Adjust Status (Form I-485), on September 11, 2008. See *Forms I-360, I-485*.

The Field Office Director denied the petition for SIJ classification finding that “there is no evidence that [the petitioner was] dependant upon a juvenile court of the United States.” *Decision of the Field Office Director, supra* at 4. Additionally, it appears that the Field Office Director questioned the basis for the juvenile court’s finding of abandonment, noting that there “is no indication that [the petitioner’s mother] intended to abandon her children.” *Id.* at 3. Finally, the Field Office Director denied relief because the petitioner was “placed under the guardianship of [her] grandmother prior to the order by the court determining that [she was] abandoned.” *Id.* at 4. The petitioner contends that USCIS erred in denying her petition for SIJ classification because: (1) the petitioner remains under the jurisdiction of the juvenile court; (2) the juvenile court properly determined that the petitioner was abandoned; and (3) the timing of the juvenile court’s finding of abandonment is irrelevant. *See Brief on Appeal, supra.*²

Upon review, the AAO determines that the petitioner has established eligibility for SIJ classification under section 101(a)(27)(J) of the Act, as amended by the TVPRA. First, section 101(a)(27)(J)(i) of the Act pertains to an individual “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 individual . . . appointed by a State or juvenile court located in the United States. *Id.* A juvenile court is defined under the SIJ regulations as “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a). Here, the petitioner was found to be dependent on a juvenile court, and the juvenile court legally committed the petitioner to the custody of her grandmother. *See Order, supra.* Accordingly, the Field Office Director erred in determining that the petitioner was ineligible for SIJ classification because she was not dependant on a juvenile court.

Second, the Act, as amended by the TVPRA, requires a finding that the petitioner’s reunification with one or both of her parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. At the time the juvenile court issued its order, the former statutory provision required the juvenile court to deem the petitioner eligible “for long-term foster care due to abuse, neglect, or abandonment,” 8 U.S.C. § 1101(a)(27)(J)(i) (repealed), and the regulations 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,” 8 C.F.R. § 204.11(a) (1993). Here, the juvenile court determined that the petitioner was “eligible for long-term foster care due to abandonment” because her “mother is detained indefinitely in prison in Argentina and [she does] not know [her] father.” *Order, supra.* Accordingly, the juvenile court made the requisite findings of abandonment and non-viability of family reunification. Further, the juvenile court’s finding of abandonment is supported by the evidence in the record, and there is no indication that the juvenile court made an uninformed decision. *See Declaration of [REDACTED] dated Mar. 2, 2009; Letter from the Mexican General Directorate of Protection and Consular Matters to [REDACTED], supra.* As such, there was no basis for the Field Office Director to question the

² To the extent that the Field Office Director’s denial was based on the fact that the caption of the juvenile court’s order states that it is a proposed order, the petitioner correctly notes that the juvenile court’s order was filed by the court on April 18, 2008. *See Order, supra* (including dated file stamp by the Clerk of the Superior Court); *see also Juvenile Court Docket* (indicating that the Order was filed on April 18, 2008).

basis for the juvenile court's finding of abandonment. *See SIJ Memo #3, supra* at 4-5 ("The adjudicator generally should not second-guess the court rulings or question whether the court's order was properly issued.").

Third, the petitioner correctly contends that the timing of the juvenile court's finding of abandonment is not relevant to the petitioner's eligibility for SIJ classification. Here, the juvenile court placed the petitioner under the custody of court-appointed individual [REDACTED] in 2001. *See Letter of Guardianship, supra*. In 2008, the juvenile court issued an order finding that the petitioner continued to be dependent on the juvenile court, and that she had been abandoned by her mother. *See Order, supra*. Nothing in the statute or the regulations precludes a grant of SIJ classification where a petitioner has been placed with a guardian before the juvenile court issues an order finding the petitioner to be abandoned. *See* section 101(a)(27)(J) of the Act; *see also* 8 C.F.R. § 204.11(a) (1993).

Finally, the juvenile court determined that it would not be in the petitioner's best interest to be returned to her previous country of nationality. *See Order, supra*. Accordingly, the petitioner met the best interest requirement set forth in section 101(a)(27)(J)(ii) of the Act.

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). In this case, the petitioner has shown by a preponderance of the evidence that she is eligible for SIJ classification. *See Letter of Guardianship, supra; Order, supra*. Accordingly, the Field Office Director's decision will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.