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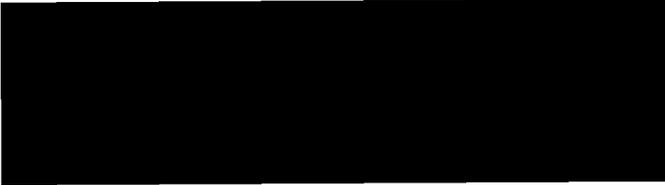
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

C6



FILE:



Office: CLEVELAND, OHIO

Date: **MAR 05 2010**

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Cleveland, Ohio, 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 21-year-old native and citizen of Haiti 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 director determined that the petitioner failed to meet his burden of proof of establishing his age, and denied the petition for SIJ classification accordingly. *See Decision of the Director*, dated Dec. 15, 2009. On appeal, the petitioner contends through counsel that U.S. Citizenship and Immigration Services (USCIS) erred in denying his petition for SIJ classification. *See Form I-290B, Notice of Appeal*, filed Jan. 15, 2010. Specifically, the petitioner contends that: (1) USCIS is prohibited from challenging the juvenile court's finding of fact regarding the petitioner's age; (2) USCIS erred in relying on hearsay and implication to question the petitioner's age; and (3) the failure of USCIS to adjudicate his SIJ petition within 180 days warrants a grant of the petition. *See Petitioner's Brief*, dated Feb. 13, 2010.

The record contains, *inter alia*, a copy of the petitioner's Haitian passport and birth certificate; documentation related to the petitioner's humanitarian parole into the United States in 1994; a letter from World Harvest Missions, dated March 7, 1996; a letter from [REDACTED], dated March 7, 1996; a Judgment Entry, entered by the Court of Common Pleas, Juvenile Division, Scioto County, Ohio (hereinafter "juvenile court") on December 28, 2004; a Complaint (Child or Children), filed with the juvenile court on October 19, 2006; an Amended Motion to Transfer Jurisdiction, filed with the juvenile court on January 19, 2007; a Journal Entry, entered by the juvenile court on January 22, 2007; a Journal Entry, entered by the juvenile court on February 5, 2007; a Judgment Entry, entered by the juvenile court on July 8, 2008; letters in support of the petitioner; an affidavit of [REDACTED]; a letter from Scioto County Children Services, dated September 26, 2006; an email message from the petitioner's parole officer, dated March 21, 2008; Petitioner's Response to the director's Notice of Intent to Deny, dated November 23, 2009; and a Brief on Appeal.

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 reviewed and 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) (hereinafter *TVPRA – SIJ Provisions Memo*).¹ 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 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.” TVPRA section 235(d)(1)(A). The TVPRA also 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

¹ This memorandum is available at http://www.uscis.gov/files/nativedocuments/TVPRA_SIJ.pdf.

basis found under state law. *See id.*² In addition, the TVPRA provided 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). 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.

The record reflects that the petitioner arrived in the United States from Haiti on April 1, 1994, pursuant to a grant of humanitarian parole. *See Form I-94, Arrival – Departure Record*. On December 28, 2004, the juvenile court exercised jurisdiction over the petitioner as a dependent child, placed him in the custody of an individual, and ordered the Scioto County Children Services Board to maintain court-ordered protective supervision over the petitioner. *See Judgment Entry*, dated Dec. 28, 2004. On October 19, 2006, the Scioto County Prosecutor’s Office filed a complaint in the juvenile court alleging that the petitioner appeared to be a delinquent child based on allegations of rape. *See Complaint*. The petitioner entered a plea of admission to the allegations of rape on January 22, 2007. *See Journal Entry*, dated Jan. 22, 2007. Pursuant to the plea agreement, the prosecutor agreed not to request the transfer of jurisdiction for the purpose of criminal prosecution on any charges which may be filed against the petitioner involving additional named victims. *Id.* The juvenile court committed the petitioner to the permanent custody of the Ohio Department of Youth Services (DYS) for placement in an institution for a minimum period of one year and a maximum period to be until the petitioner’s 21st birthday. *See Journal Entry*, dated Feb. 5, 2007. The juvenile court made a finding that the petitioner was born on January 18, 1989. *Id.*

On July 8, 2008, the juvenile court made the following findings: (1) the petitioner is eligible for long-term foster care on account of being an abandoned child pursuant to R.C. 2151.011(C); (2) it is not in the petitioner’s best interest to be returned to his country of nationality because he is blind and without any support in Haiti; and (3) the petitioner was committed to the custody of the Ohio DYS on February 5, 2007. *See Judgment Entry*, dated July 8, 2008. The juvenile court deferred a ruling on the petitioner’s sexual predator classification until his release from DYS custody. *Id.* The petitioner filed his Petition for Amerasian, Widow or Special Immigrant (Form I-360) with USCIS on July 31, 2008.

If the petitioner was under 21 years of age on the date on which he filed his Form I-360, the record establishes his eligibility for SIJ classification. *See TVPRA* section 235(d)(6); *see also TVPRA – SIJ Provisions Memo* at 3. 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 agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States.” Here, the petitioner was legally committed to the Ohio DYS, satisfying section 101(a)(27)(J)(i) of the Act.

² 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).

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 July 8, 2008 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." Former section 101(a)(27)(J)(i) (1998), 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 on account of being an abandoned child pursuant to R.C. 2151.011(C)." *See Judgment Entry*, dated July 8, 2008. Accordingly, the juvenile court made the requisite findings of abandonment and non-viability of family reunification.

Third, the juvenile court determined that it would not be in the petitioner's best interest to be returned to Haiti because he is blind and without support in Haiti. *See id.* Accordingly, the petitioner satisfies the best interest requirement set forth in section 101(a)(27)(J)(ii) of the Act.

The director determined that the petitioner did not meet the age requirement for SIJ classification because he failed to meet his burden of establishing his true and correct date of birth. Specifically, the director found that the birth certificate submitted by the petitioner was fraudulent. Second, the director noted that Scioto County Children Services questioned the validity of the petitioner's claimed date of birth. *See Letter from Scioto County Children Services, supra.* Third, the director indicated that the record contained a copy of an email message from the petitioner's parole officer that questioned the petitioner's claimed age. *See Email Message*, dated March 21, 2008 (stating that "[t]hey also claim that [the petitioner] may be as old as 25 years old"). The petitioner challenges the basis for the director's determination that his birth certificate is fraudulent, contends that the director was required to accept the juvenile court's finding regarding his date of birth, and claims that the director erred in relying on hearsay to deny the petition.

An SIJ petitioner must submit documentary evidence of his or her age. *See* 8 C.F.R. § 204.11(d)(1) (1993). Examples of documentary evidence include:

a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age[.]

Id. The regulation affords discretion to the director to accept a wide variety of documentary evidence to prove the petitioner's age. *Id.*

Here, the petitioner presented a copy of a Haitian birth certificate, issued on July 26, 1993, indicating that [REDACTED] was born of an unknown woman on January 18, 1989. *See Birth Certificate.* Based on several apparent irregularities, and following an investigation, the director concluded that the petitioner's birth certificate was fraudulent. The petitioner challenges the basis for the director's determination, and has provided some information in an effort to explain the irregularities in the birth certificate. *See Appeal Brief; Affidavit of [REDACTED] supra.* Because

the evidence regarding the validity of the petitioner's birth certificate is inconclusive, the AAO determines that that petitioner has failed to meet his burden of showing by a preponderance of the evidence that his birth certificate is valid.

However, the preponderance of the evidence in the record supports the petitioner's contention that he was born on January 18, 1989. First, the record contains a copy of the petitioner's Haitian passport, issued on February 22, 1994, corroborating the claimed date of birth. *See Passport for [REDACTED]* An official passport is recognized as appropriate documentation of a petitioner's age, *see* 8 C.F.R. § 204.11(d)(1) (1993), and there is no evidence in the record that the petitioner's passport was fraudulent or otherwise invalid.

Second, the documentation in support of the petitioner's request for humanitarian parole corroborates the claimed birth date. *See Letter from [REDACTED]* dated Feb. 16, 1994; *Letter from the Director of Child Care for the Gabriel Foundation*, dated Feb. 28, 1994. Further, the letters regarding the petitioner's care and placement in the United States corroborate the date of birth. *See Letter from World Harvest Missions*, dated Mar. 7, 1996; *Letter from [REDACTED]* dated Mar. 7, 1996.

Third, upon committing the petitioner to the custody of Ohio Department of Youth Services, the juvenile court made a finding on the record that the petitioner's birth date is January 18, 1989. *See Journal Entry*, dated Feb. 5, 2007.

Although the record contains some speculation that the petitioner is older than his claimed age, *see Letter from Scioto County Children Services* (indicating that "it is suspected that the date of birth listed for [the petitioner] may be erroneous and that he may be an adult"); *Email Message* (referencing a claim that the petitioner "may be as old as 25 years old"); *Amended Motion to Transfer Jurisdiction* (stating that the petitioner "may actually be of an older age because a certified birth record appears to be unavailable"), the weight of the evidence in the record supports the consistently claimed date of birth. Additionally, there is no evidence of an alternative birth date. Accordingly, the evidence in the record indicates that the petitioner was under 21 years of age when he filed his petition for SIJ classification.

Because the appeal will be sustained, the AAO denies as moot the petitioner's requests for oral argument and to file a supplemental brief. Similarly, the AAO declines to address the petitioner's contention that director was obligated to approve his SIJ petition because it was not adjudicated within 180 days of the effective date of the TVPRA.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the petitioner to establish eligibility for the benefit sought. Here, the petitioner has shown by a preponderance of the evidence that he was 19 years old when he applied for classification as an SIJ, and that he is eligible for the benefit. Accordingly, the appeal will be sustained, the director's decision will be withdrawn, and the petition will be approved.

The director denied the petitioner's Form I-485 application to adjust status because the petition for SIJ classification was denied. *See Decision of the Director*, dated Dec. 15, 2009. Because the SIJ petition is now approved, the basis for the denial of the Form I-485 is no longer applicable. Accordingly, the director shall reexamine the petitioner's eligibility for adjustment of status, taking into account all relevant evidence. *See, e.g., Complaint* (charging petitioner with sexual conduct with a 10-year-old victim); *Journal Entry*, dated Jan. 22, 2007 (naming two additional potential victims).

ORDER: The appeal is sustained. The December 15, 2009 SIJ decision of the director is withdrawn, and the petition is approved.