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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

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FILE:

[REDACTED]

Office: NEW YORK, NY

Date: SEP 23 2010

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)

ON BEHALF OF PETITIONER:

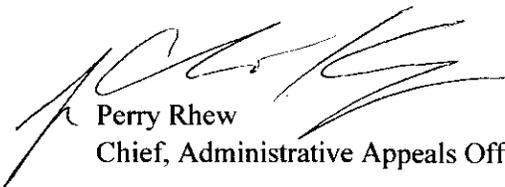
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INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, 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 a 22-year-old native and citizen of China 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 did not meet the eligibility requirements for SIJ classification. *See Decision of the Director*, dated Aug. 13, 2009. Specifically, the director found that the record did not establish that the petitioner was eligible for long-term foster care due to abuse, neglect, or abandonment by his parents, or that it was not in the petitioner's best interest to be returned to China. *Id.* The application was denied accordingly. *Id.* On appeal, the petitioner contends through counsel that he is eligible for SIJ classification because: (1) it can be implied that he was abandoned by his parents; (2) he is eligible for long-term foster care; and (3) it would not be in his best interest to be returned to his country of nationality given current human rights conditions in China. *See Form I-290B, Notice of Appeal*, filed Aug. 31, 2009; *Brief in Support of Appeal*, filed Sep. 30, 2009.

The record contains, *inter alia*, a Petition for Appointment of Guardian of Person, dated September 17, 2002, requesting the Kings County, New York Family Court (hereinafter "juvenile court") to appoint the petitioner's aunt as his guardian; a Temporary Letter of Guardianship of the Person of a Minor, issued by the juvenile court on October 31, 2002, authorizing the petitioner's aunt to serve as his temporary guardian; a Letter of Guardianship of the Person of a Minor, issued by the juvenile court on February 5, 2003, authorizing the petitioner's aunt to serve as his guardian; an Order Appointing Guardian of the Person, issued by the juvenile court on February 5, 2003, ordering the petitioner's aunt to be appointed as his guardian; and a brief in support of the appeal. On appeal, counsel requested 90 days to supplement the record with documentation related to the petitioner's New York family court proceedings. *See Brief in Support of Appeal*. To date, nearly a year later, no additional documentation related to the juvenile court proceedings has been received by the AAO.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 [REDACTED] 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,

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

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.*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.

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 interest determination was “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,” H.R. Rep. No. 105-405 at 130 (1997); *see also* Memo. from ██████████, 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 certain 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 record reflects that the petitioner was born in China on ██████████. The petitioner claims that he entered the United States without being inspected and admitted in June, 2002. *See Form I-360, Petition for Special Immigrant*, filed July 22, 2005.

On September 17, 2002, ██████████, the petitioner’s aunt, filed a petition with the juvenile court seeking to be appointed the guardian of the petitioner. *See Petition for Appointment of Guardian of Person*. The petitioner’s aunt “request[ed] custody for educational and medical purpose only.” *Id.* Additionally, the petitioner’s aunt alleged in the juvenile court petition that “both [of the petitioner’s] parents are living in China and are unable to provide for the child at this time.” *Id.* The juvenile court authorized the petitioner’s aunt to serve as his temporary guardian. *See Temporary Letter of Guardianship of the Person of a Minor*. On February 5, 2003, the juvenile court appointed the petitioner’s aunt as his guardian. *See Order Appointing Guardian of the*

² U.S. Citizenship and Immigration Services (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).

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

Person. The petitioner filed his Petition for Special Immigrant with USCIS on July 22, 2005, when he was 17 years old.

Here, the director did not adjudicate this case under the Act as amended by the TVPRA. As noted above, the TVPRA removed the long-term foster care requirement from the Act. Accordingly, the director erred in relying on the juvenile court's lack of a finding relating to long-term foster care. Additionally, the TVPRA expanded the group of aliens eligible for SIJ classification to include those who have been placed under the custody of an individual appointed by a juvenile court. Because the juvenile court placed the petitioner under the guardianship of court-appointed individual [REDACTED] *see Order Appointing Guardian of the Person*, the petitioner meets one of the requirements for SIJ classification under section 101(a)(27)(J)(i) of the Act.

However, the petitioner does not meet the remaining requirements for SIJ classification. First, there is no judicial court finding that reunification with one or both of the petitioner's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. Although the petitioner contends that "[i]t can clearly be implied that, in being sent from his homeland at the tender age of fourteen that [he] was abandoned by [his] parents," *Brief on Appeal* at 3, the petitioner has presented no evidence that the juvenile court made a finding of abandonment.

Second, the record lacks a determination made in administrative or judicial proceedings that it would not be in the petitioner's best interest to be returned to China. *See* section 101(a)(27)(J)(ii) of the Act. The petitioner contends that it would not be in his best interest to be returned to his country of nationality based on China's poor human rights record, as documented in the record. *See Brief on Appeal* at 3; *see also U.S. Dept. of State 2008 Human Rights Report: China*. However, there is no evidence that the requisite best interest determination was made in judicial or administrative proceedings.

Third, USCIS must determine whether the request for SIJ classification is bona fide, or whether the evidence shows that the petitioner sought juvenile court intervention "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." *SIJ Memo #3, supra* at 2. Here, lacking any evidence relating to parental abuse, neglect or abandonment, a grant of SIJ classification is not warranted because the record indicates that the petitioner sought SIJ classification primarily for the purpose of obtaining immigrant status in the United States.

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 not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.