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



**U.S. Citizenship  
and Immigration  
Services**

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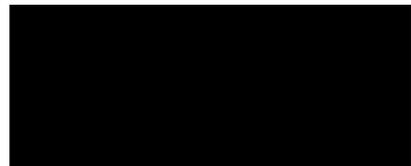
DATE: **JUN 15 2011** Office: HARTFORD, CT

FILE:

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:

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Hartford, Connecticut, denied the special immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is an 18-year-old native and citizen of Chile 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 denied the petition finding that the juvenile court failed to determine that family reunification was not viable on the basis of abuse, neglect, abandonment, or a similar basis found under state law. On appeal, the petitioner contends through counsel that she is eligible for SIJ classification.

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. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, 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). *See* section 235(d) of the TVPRA; *see also* Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs. (USCIS), 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*). The SIJ provisions of the TVPRA are applicable to this appeal. *See* section 235(h) of the TVPRA.

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 ██████ amended the ██████ definition by expanding the group of aliens eligible for ██████ classification to include aliens who have been placed under the custody of “an individual or entity appointed by a State or juvenile court.” ██████ section 235(d)(1)(A). The ██████ 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 basis found under state law. *See id.*<sup>1</sup>

Additionally, the ██████ 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 Field Office Director, to “consent[] to the grant of special immigrant juvenile status.” ██████ section 235(d)(1)(B). This consent determination “is an acknowledgement that the request for SIJ classification is bona fide,” ██████ – *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 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*). “An approval of an SIJ petition itself shall be evidence of the Secretary’s consent.” ██████ – *SIJ Provisions Memo* at 3. Second, the ██████ 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).

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<sup>1</sup> 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).

The record reflects that the petitioner was born in Chile on October 2, 1992, to [REDACTED] and [REDACTED]. See *Birth Certificate of [REDACTED]*. The petitioner was admitted to the United States as a visitor on August 30, 1998.

On September 22, 2008, the petitioner's [REDACTED] filed a petition with the State of Connecticut Superior Court for Juvenile Matters (hereinafter juvenile court) stating that the petitioner was "uncared for in that . . . [her] home cannot provide the specialized care which the physical, emotional or mental condition of the child/youth requires." See *Petition: Neglected, Uncared-For, Dependent Child/Youth*, filed Sept. 22, 2008. The [REDACTED] indicated that the petitioner had a history of chronic mental health concerns which adversely affected her ability to function in the home, school, and the community. See *Summary of Facts*, dated Sept. 22, 2008. The [REDACTED] further indicated that the petitioner had severe disputes with her parents, school expulsions, and placements in juvenile detention facilities. *Id.* The Connecticut Department of Children and Families (DCF) recommended that the petitioner be committed to the care and custody of the DCF as an uncared for child upon placement in a residential facility. See *Social Study*, dated Oct. 6, 2008. The juvenile court found the petitioner to be "uncared for," determined that continuation in the home is contrary to the petitioner's welfare, and committed her to the DCF until further order of the court. See *Adjudicatory/Dispositional Order*, dated Nov. 5, 2008.

On April 16, 2009, the DCF recommended a permanency plan of family reunification upon successful completion of her residential placement program. See *Status Report*, dated Apr. 16, 2009; see also *Motion to Review Permanency Plan*, filed Aug. 3, 2009. On September 10, 2009, the juvenile court maintained the petitioner's commitment to the DCF, and approved a permanency plan of parental reunification. See *Permanency Plan Order and Review*, dated Sept. 10, 2009.

On April 23, 2010, the DCF recommended a permanency plan of Independent Living. See *Study in Support of Permanency Plan*, dated April 23, 2010; see also *Motion to Review Permanency Plan*, dated June 8, 2010. Although the petitioner's parents had been cooperative and involved in the petitioner's treatment, they expressed their inability to provide for the petitioner's specialized needs in the home. See *Study in Support of Permanency Plan*, dated April 23, 2010. On July 14, 2010, the juvenile court found that based on the compelling reasons documented by the DCF, it would not be in the best interest of the petitioner for her permanency plan to include reunification with her parents. *Permanency Plan Order and Review*, dated July 14, 2010. Instead, the court found that the petitioner should be placed in an independent living program. *Id.*

The record also includes the juvenile court's determination that:

1. It is in the best interest of this child to remain committed to the custody of DCF, to remain in the United States and to not be returned to her home country of Chil[e].
2. The child is eligible for long term foster care and shall be placed in such program.

See *Order*, dated Aug. 12, 2009.

The petitioner filed her Petition for Special Immigrant (Form I-360) with USCIS on December 2, 2009, when she was 17 years old. The director denied the petition on December 10, 2010, and the petitioner timely appealed.

Here, the juvenile court found that the petitioner's reunification with her parents was not viable based on its determination that the petitioner was an uncared for youth. *See Permanency Plan Order and Review*, dated July 14, 2010; *Adjudicatory/Dispositional Order*, dated Nov. 5, 2008.

Connecticut law provides, in relevant part, that:

[a] child or youth may be found "uncared for" who is homeless or whose home cannot provide the specialized care that the physical, emotional or mental condition of the child or youth requires.

Conn. Gen. Stat. Ann. § 46b-120(9). Additionally, the following definitions apply to abused, dependent, and neglected children:

(3) "Abused" means that a child or youth (A) has been inflicted with physical injury or injuries other than by accidental means, (B) has injuries that are at variance with the history given of them, or (C) is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment;

\* \* \*

(6) A child or youth may be found "dependent" whose home is a suitable one for the child or youth, except for the financial inability of the child's or youth's parents, parent or guardian, or other person maintaining such home, to provide the specialized care the condition of the child or youth requires;

\* \* \*

(8) A child or youth may be found "neglected" who (A) has been abandoned, (B) is being denied proper care and attention, physically, educationally, emotionally or morally, (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth, or (D) has been abused[.]

\* \* \*

Conn. Gen. Stat. Ann. § 46b-120. Once a judicial determination has been made that a child is abused, dependent, neglected, or uncared for, the same legal consequences apply. *See Conn. Gen. Stat. Ann. § 46b-129(j)*. Specifically,

Upon finding and adjudging that any child or youth is uncared-for, neglected or dependent, the court may commit such child or youth to the Commissioner of Children and Families. Such commitment shall remain in effect until further order of the court, except that such commitment may be revoked or parental rights terminated at any time by the court, or the court may vest such child's or youth's

legal guardianship in any private or public agency that is permitted by law to care for neglected, uncared-for or dependent children or youths or with any other person or persons found to be suitable and worthy of such responsibility by the court, including, but not limited to, any relative of such child or youth by blood or marriage. . .

*Id.*

Here, the juvenile court determined that the petitioner was an uncared for child, committed her to the care and custody of the DCF, and found that parental reunification was not viable. The record supports the juvenile court's finding that leaving the petitioner in her home was contrary to her welfare. *See Petition: Neglected, Uncared-For, Dependent Child/Youth; Summary of Facts; Social Study.* In Connecticut, children adjudged "uncared-for, neglected or dependent" are equally entitled to juvenile court intervention and protection.<sup>2</sup> *See Conn. Gen. Stat. Ann. § 46b-120(6),(8); 121(a)(1).* Further, the legal consequences of the juvenile court's uncared-for finding are identical to those faced by children who have been adjudicated neglected or dependent, which supports a determination that intervention based on an uncared-for finding is substantially similar to intervention based on abuse or neglect or dependency. *See Conn. Gen. Stat. Ann. § 46b-129(j).* Accordingly, the petitioner has shown that the juvenile court placed her in the custody of the DCF and determined that family reunification was not viable because she was uncared for, a basis similar to abuse, neglect, or abandonment under Connecticut law, as required by section 101(a)(27)(J)(i) of the Act. Additionally, the juvenile court determined that it would not be in the petitioner's best interest to be returned to Chile. *See Order*, dated Aug. 12, 2009. Accordingly, the petitioner satisfies the best interest requirement set forth in section 101(a)(27)(J)(ii) of the Act.

Finally, USCIS will consent to a grant of SIJ classification upon a determination that the request is bona fide. *See Section 101(a)(27)(J)(iii) of the Act; TVPRA – SIJ Provisions Memo at 3.* Although the record reflects that the petitioner has maintained contact with her parents, and that they have been supportive of and involved in her treatment, these factors do not contradict the juvenile court's findings that parental reunification is not viable because the petitioner is an uncared-for youth.

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 she is eligible for the benefit. Accordingly, the appeal will be sustained, the director's decision will be withdrawn, and the petition will be approved.

**ORDER:** The appeal is sustained. The decision of the director is withdrawn, and the petition is approved.

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<sup>2</sup> Connecticut's definition of neglected children includes those who have been abused. *Conn. Gen. Stat. Ann. § 46b-120(8).*