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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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

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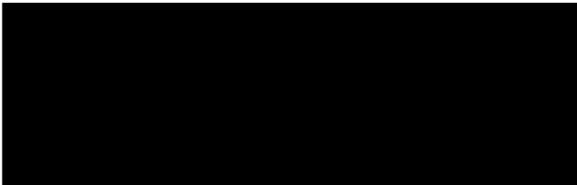
FILE:  Office: OMAHA, NEBRASKA

Date **MAR 15 2011**

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)

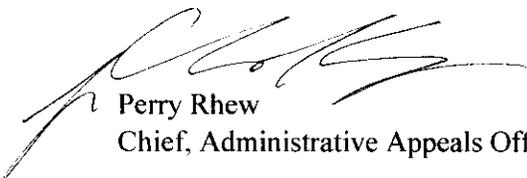
ON BEHALF OF PETITIONER:



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, Omaha, Nebraska, 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 a 19-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 director determined that the petitioner was not eligible for SIJ classification because the petitioner's guardianship order was insufficient, and because the petitioner's contact with his mother undermined his claim of abuse, abandonment, or neglect. The petition was denied accordingly. On appeal, the petitioner contends through counsel that he is eligible for SIJ classification under section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J), as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008).

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 TVPRA, 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 regulations define a “juvenile court” 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) (1993).

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 basis found under state law. *See id.*<sup>1</sup>

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 Field Office 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 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.” *TVPRA – SIJ Provisions Memo* at 3.

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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).

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 Mexico on February 5, 1992, to Irma Anaya Miranda and an unknown father. [REDACTED] The petitioner’s mother was 15 years old at the time of his birth. *Id.* The petitioner arrived in the United States without being admitted or paroled in or around 1995. *See Form I-360*, filed Sept. 27, 2009; *Affidavit of* [REDACTED] dated Nov. 6, 2010. The petitioner claims that he came to the United States with his grandmother, and that she took care of him until she passed away in March, 2009. *Affidavit of* [REDACTED]

On June 4, 2009, the petitioner was served with a Notice to Appear for removal proceedings. The petitioner is scheduled to appear for a master calendar hearing before an immigration judge on March 21, 2011.

On August 21, 2009, the County Court of Douglas County, Nebraska entered an order appointing the petitioner’s uncle, [REDACTED] as his permanent guardian. *See Order for Appointment of Permanent Guardian*, dated Aug. 21, 2009 (filed in the county court probate division). The court made the following pertinent findings:

That proper notice of the time and place of hearing was given by the petitioner in accordance with [REDACTED] to the mother of the minor child, [REDACTED] who does not appear in Court;

That the mother of the minor child, [REDACTED] has abandoned the minor child;

That paternity for the minor child has never been established and that the minor child has never had any contact with his father;

That reunification with one or both of the minor child’s parents is not viable due to abandonment;

That it is not in the minor child’s best interest to return to his or his parent’s home country of nationality or country of last habitual residence as the minor child has resided continuously in the United States since he was a young child;

That [REDACTED] awarded Temporary Guardian for the above-named minor child by this Court on July 23, 2009, has appeared and is willing to accept the responsibility of Permanent Guardian[.]

*Id.* The petitioner filed his Petition for Special Immigrant (Form I-360) with USCIS on September 27, 2009, when he was 17 years old. The director denied the petition on November 19, 2010, and the petitioner filed a timely appeal.

On appeal, the petitioner contends that the director erred in applying regulatory provisions that were superseded by the TVPRA and that he is eligible for SIJ classification under the amended statute. These contentions have merit.

First, a “juvenile court” is defined 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) (1993). Here, the Probate Division of the Douglas County Court had jurisdiction to order the appointment of a guardian for the petitioner under section 30-2608 of the Nebraska Revised Statutes. Accordingly, the director erred in determining that the petitioner’s guardianship order was not issued by a juvenile court.

Second, a special immigrant juvenile refers 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 or entity appointed by a State or juvenile court located in the United States.” Section 101(a)(27)(J)(i) of the Act (emphasis added). Here, the juvenile court placed the petitioner under the custody of his uncle, which satisfies section 101(a)(27)(J)(i) of the Act. Accordingly, the director erred in determining that the juvenile court’s order was insufficient because it did not declare the petitioner to be dependent on a juvenile court.

Third, the Act, as amended by the TVPRA, requires a finding that the petitioner’s reunification with one or both of his parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” *Id.* Here, the juvenile court found that the petitioner’s reunification with both of his parents was not viable. *See Order for Appointment of Permanent Guardian.* Specifically, the court found that the petitioner was abandoned by his mother, and that he has never had any contact with his father. *Id.* Accordingly, the juvenile court made the requisite findings of abandonment and non-viability of family reunification.

Fourth, the juvenile court determined that it would not be in the petitioner’s best interest to be returned to Mexico because he has resided continuously in the United States since he was a young child. *See id.* 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. The director questioned the juvenile court’s finding of abandonment based on evidence in the record that the petitioner’s mother resides in Omaha, the petitioner had listed her as his emergency contact on several official forms, and because “she is still active in [the petitioner’s] life.” *Decision of the Director*, at 3. On appeal, the petitioner contends that the record supports the juvenile court’s finding of parental abandonment. *See Brief on Appeal*, dated Dec. 15, 2010.

Here, the petitioner has shown by a preponderance of the evidence that he was abandoned by his parents, and that his request for SIJ classification is bona fide. Specifically, after conducting a hearing, the juvenile court determined that the petitioner had been abandoned by his mother. *See Order for Appointment of Permanent Guardian.* The court found that the petitioner’s mother had notice of the hearing, but that she failed to appear in court. *Id.* The court also found that the petitioner’s paternity has never been established, and that he has never had any contact with his father. *Id.*; *see also Birth Certificate of* [REDACTED] (leaving blank name of the petitioner’s father). The petitioner presented testimony during his SIJ interview that his

mother abandoned him when he was an infant, and that he lived with, and was raised by, his grandmother. *See Form I-360*. The petitioner further explained in his affidavit that although his mother has had sporadic contact with him, she has never taken care of him. *Affidavit of* [REDACTED] [REDACTED] The petitioner's uncle states that the petitioner had been raised by his grandmother since infancy because his mother was too young to care for him, and because "she is not that kind of person who cares about family ties." *Affidavit of* [REDACTED] [REDACTED] dated Dec. 6, 2010; *see also Birth Certificate of* [REDACTED] (noting that the petitioner's mother was 15 years old at the time of his birth). Further, the affidavits indicate that the petitioner's mother has never shown an interest in being part of the petitioner's life, and she did not try to help him after his grandmother's death. *Affidavit of* [REDACTED] [REDACTED] *Affidavit of* [REDACTED]

Although the record reflects that the petitioner's mother has resided in Omaha and has used the petitioner's address; that she once sent him a letter in March, 2010, while he was incarcerated; and that the petitioner twice listed his mother as a contact; these factors do not necessarily contradict a finding of parental abandonment in this case, or show that the juvenile court's determination was uninformed. In sum, the preponderance of the evidence in the record supports the juvenile court's finding of abandonment.

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 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.