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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

PUBLIC COPY

CG

[Redacted]

FILE:

[Redacted]

Office: HARTFORD, CONNECTICUT

Date: **MAR 24 2011**

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:

[Redacted]

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 a 20-year-old native and citizen of Guatemala 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 juvenile court's orders were insufficient, and because the petitioner provided conflicting statements regarding his relationship with his parents. The petition was denied accordingly. On appeal, the petitioner contends through counsel that the documentation submitted in support of his petition is sufficient, and that he 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, 8 U.S.C. § 1101(a)(27)(J). 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 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.*¹

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. 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).

¹ 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 Guatemala on December 22, 1990, to [REDACTED]. The petitioner arrived in the United States without being admitted or paroled on or around July 12, 2006. The petitioner was apprehended, placed in removal proceedings, and an immigration judge issued a final order of removal on July 26, 2006. Some time after his removal on August 12, 2006, the petitioner again entered the United States without being admitted or paroled.

The petitioner came to the attention of the Connecticut Department of Children and Families (DCF) on or around September 26, 2007, after being the victim of assault. *See Social Study in Support of Neglect Petition*, filed Dec. 19, 2007; *Proposed Juvenile Court Order*, signed Feb. 6, 2008. The petitioner was placed in a DCF-licensed shelter on September 28, 2007. *See Motion to Review Permanency Plan*, filed June 23, 2008; *Social Study in Support of Neglect Petition*.

On February 6, 2008, the Superior Court for Juvenile Matters in Norwalk, Connecticut (hereinafter "juvenile court") adjudicated the petitioner neglected by his parents, and committed him to the care and custody of the DCF until further order of the court. *See Adjudicatory/Dispositional Order*, dated Feb. 6, 2008; *Proposed Juvenile Court Order*. The court found that the petitioner was neglected because his parents:

have made no provision for his care, have twice instructed him to travel from Guatemala to the United States without accompaniment or resources, have made no provision for his maintenance and care in the United States, and have failed to appear or participate in proceedings before this court.

Proposed Juvenile Court Order. At the time of the neglect determination, the petitioner was receiving therapeutic treatment for the psychiatric aftershocks of trauma, and the court found that it was not in the petitioner's best interests to return to his mother, father, or home country. *Id.*; *see also Social Study in Support of Neglect Petition* (recommending that the petitioner be committed to the care and custody of the DCF based on the petitioner's family history, including abuse by his father, and current psychological and medical needs).

On June 23, 2008, the DCF filed a motion with the juvenile court to request the petitioner's placement in long-term foster care. *See Motion to Review Permanency Plan*, filed June 23, 2008. The DCF indicated that parental reunification was not in the petitioner's best interest given the "compelling reasons" documented in the petitioner's social study. *Id.*; *see also Social Study in Support of Neglect Petition*. After a hearing and upon consideration of the petitioner's best interest, the juvenile court issued an order placing the petitioner in long-term foster care. *See Permanency Plan Order and Review*, dated Aug. 27, 2008. In ordering long-term foster care, the juvenile court determined that the DCF documented a compelling reason why it would not be in the petitioner's best interest to pursue parental reunification. *Id.*

On October 2, 2008, the DCF filed a Motion for Best Interest Finding with the juvenile court. *See Motion for Best Interest Finding*, dated Oct. 2, 2008. In the juvenile court's best interest finding, the court determined that:

It is in the best interests of the referenced minor child, [REDACTED] to remain committed to the custody of the DCF, to remain in the United States of America, and to not be returned to the child's home country of Guatemala.

Findings and Order Regarding Special Immigrant Status of a Child Committed to the Department of Children and Families, signed Oct. 29, 2008. The petitioner filed his Petition for Special Immigrant (Form I-360) with USCIS on March 4, 2009, when he was 18 years old. The director denied the petition on November 23, 2010, and the petitioner filed a timely appeal.

On appeal, the petitioner contends that the documentation submitted in support of his petition is sufficient, and that he is eligible for SIJ classification. These contentions have merit.

First, 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 agency or department of a State . . ." Section 101(a)(27)(J)(i) of the Act. Here, the juvenile court placed the petitioner in long-term foster care under the custody of the Connecticut Department of Children and Families, which satisfies section 101(a)(27)(J)(i) of the Act.

Second, the Act 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 was neglected by his parents. *See Adjudicatory/Dispositional Order; Proposed Juvenile Court Order.* Further, the court found that it was not in the petitioner's best interests to return to his mother, father, or home country. *Proposed Juvenile Court Order.* Additionally, when ordering the petitioner's placement in long-term foster care, the juvenile court determined that it would not be in the petitioner's best interest to pursue family reunification based on the compelling reason documented by the DCF. *See Permanency Plan Order and Review.* Accordingly, the juvenile court made the requisite findings of neglect and non-viability of family reunification, and the director's finding to the contrary was in error.

Third, the juvenile court determined that it would not be in the petitioner's best interest to be returned to Guatemala. *See Proposed Juvenile Court Order; Findings and Order Regarding Special Immigrant Status of a Child Committed to the Department of Children and Families.* Accordingly, the petitioner satisfies the best interest requirement set forth in section 101(a)(27)(J)(ii) of the Act.

Fourth, 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; *TVPRRA – SIJ Provisions Memo* at 3. The director questioned the juvenile court's finding of neglect because the petitioner "provided conflicting statements regarding his situation with his biological parents." Specifically, the director determined that: (1) the petitioner did not claim past abuse or a fear of harm when he was apprehended in 2006; (2) the petitioner initially told the DCF that his parents did not use physical discipline; (3) the petitioner's mother stated to the DCF that she wanted him to return to Guatemala; and (4) the DCF initially planned to return the petitioner to Guatemala, but the petitioner refused to go.

Here, the juvenile court had access to the petitioner's background reports when making the February 6, 2008 determination that the petitioner was neglected by his parents and that he should be committed to the care and custody of the DCF. *See Adjudicatory/Dispositional Order; Proposed Juvenile Court Order; DCF Summary of Facts*, dated Oct. 1, 2007 (filed with the juvenile court on Oct. 2, 2007); *Social Study in Support of Neglect Petition*, dated Dec. 18, 2007 (filed with the juvenile court on Dec. 19, 2007). To the extent that any of the information provided to the DCF could potentially detract from the petitioner's credibility and the juvenile court's finding of parental neglect, these issues were placed before the juvenile court. Because there is no indication that the juvenile court was misled or uninformed, and the evidence in the record supports the findings of neglect, there is no basis to question the propriety of the juvenile court's order.

Finally, the record reflects that the petitioner was questioned when he was apprehended in 2006, and a border patrol agent stated that the petitioner did not fear persecution, harm or torture upon return to Guatemala. In an affidavit submitted on appeal, however, the petitioner states that he does not recall discussing any source of abuse or any kind of fear of going back to Guatemala with immigration officers. *Affidavit of Boris Gonzalez*, dated Dec. 21, 2010. Further, the petitioner states that he "was only 15 years old at the time and had no idea about the legal process . . . and what [he] was being specifically asked. . ." *Id.* The record does not include a transcript of the interview and the agent's statement that the petitioner lacked a credible fear of persecution upon return to Guatemala does not detract from the petitioner's claims of parental abuse and the juvenile court's finding of parental neglect. *Cf. Ramsameachire v. Ashcroft*, 357 F.3d 169, 179 (2d Cir. 2004) (discussing limitations inherent in initial interviews conducted by governmental authorities immediately after an alien's arrival in the United States).

In sum, the factors listed by the director were considered by the juvenile court, and they do not contradict a finding of parental neglect in this case. The petitioner has shown by a preponderance of the evidence that his request for SIJ classification is bona fide.

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.