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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

C6

[redacted]

DATE: MAY 06 2011 Office: HARTFORD, CT FILE: [redacted]

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.

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 $630. 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 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 dismissed.

The petitioner is a 20-year-old native and citizen of Mongolia 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 found that the information submitted in support of the petitioner's juvenile court proceedings and her SIJ petition conflicted with the information contained in the non-immigrant visa applications of the petitioner and her family members. *See Decision of the Director*, dated Nov. 23, 2010. The director denied the application accordingly. *Id.* On appeal, the petitioner contends through counsel that the director's denial is not supported by the evidence, the director failed to provide the petitioner with an opportunity to rebut the adverse information before denying the petition; and the director erred in re-litigating the issues decided by the juvenile court. *See Memorandum in Support of Appeal*, dated Dec. 22, 2010.[1]

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

[1] Although counsel requested a 90-day extension of time to submit additional evidence in support of the claim, the AAO has received nothing further.

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.*[2]

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

[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).

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 Mongolia on [redacted]. *See Birth Certificate for* [redacted], registered Apr. 25, 1991. According to the petitioner's birth certificate, her father's name is [redacted], and her mother's name is [redacted] *Id.* The petitioner was admitted to the United States as a child of a nonimmigrant exchange visitor, her father, on June 9, 1999. *See Form I-94, Arrival-Departure Record.*

On December 12, 2008, the Center for Children's Advocacy filed a Neglect Petition on the petitioner's behalf with the State of Connecticut Superior Court for Juvenile Matters (hereinafter juvenile court) alleging that the petitioner was a neglected youth in that she had been abandoned. *See Petition for Neglected Child*, filed Dec. 12, 2008. In support of the petition, counsel averred that the petitioner's mother died when she was an infant, that she was raised by her maternal grandmother until she died when the petitioner was eight years old, and that she then came to the United States to reside with her father. *Id.* The petition further alleged that the petitioner's father "routinely physically abused [her] and neglected her basic needs." *Id.* Thereafter, the petitioner was taken into the home of an unrelated Mongolian family in the United States, and she has not had contact with her father since that time. *Id.* The petition alleged that she "cannot return to Mongolia, as all of her remaining family members there have died, and [she] has no guardian willing to care for her in the United States." *Id.*[3]

The Connecticut Department of Children and Families (DCF) prepared a Social Study for the juvenile court. *See Social Study for Superior Court for Juvenile Matters*, dated Jan. 5, 2009. According to the information the petitioner provided to the DCF, her mother and grandmother are deceased, and she came to the United States to live with her father, his wife, and their son. *Id.* The petitioner reported "that there was great disparity between the care provided to [her] little brother and the way she was treated," and her father "began to physically and sexually abuse [her] and eventually his wife also began to physically abuse her." *Id.* The DCF objected to the neglect petition contending, among other things, that the petitioner was not a resident of Connecticut, and that she was about to turn 18 years old. *Id.*

On January 8, 2009, the juvenile court adjudicated the petitioner as a neglected youth, and committed her to the DCF to serve as her guardian. *See Adjudicatory/Dispositional Orders*,

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[3] The record also includes copies of the petitioner's Motion for Order Regarding Youth's Eligibility for Special Immigrant Juvenile Status, and a Memorandum of Law in Support of the Motion, dated December 30, 2008. It is unclear whether these pleadings were filed because they do not show that they have been date-stamped by the juvenile court.

dated Jan. 8, 2009. In the associated Memorandum of Decision, the juvenile court repeated the petitioner's allegations regarding her family history, and found that the petitioner's reunification with her father was "not viable due to the past abuse and abandonment of the child by father and his unknown whereabouts." *See Memorandum of Decision*, filed Jan. 8, 2009. The juvenile court further found that the petitioner's mother is deceased. *Id.* Additionally, the juvenile court determined that:

> it is not in [the petitioner's] best interest to return to Mongolia. She is enrolled in Yale University, has settled in and has a desire to remain in New Haven[, Connecticut]. An involuntary return to Mongolia would subject the child to living in a country where she knows no one, except possibly her abusive father, and a return to Mongolia would subject her to an immediate state of homelessness.

Id.

The petitioner filed her Petition for Special Immigrant (Form I-360) with USCIS on December 2, 2009, when she was 18 years old. On January 26, 2010, the petitioner attended an interview on her petition. On the same day, the director requested evidence regarding the non-viability of family reunification, the documentation submitted to the juvenile court, and the circumstances surrounding the petitioner's arrest in Washington in 2008. *See Form I-72*, dated Jan. 26, 2010. The petitioner provided responsive information.

The director denied the petition on November 23, 2010. The denial informed the petitioner that the information recorded on the non-immigrant visa applications of the petitioner and her father was inconsistent with the claims presented to the juvenile court and to USCIS. Specifically, the director's decision details the multiple visa applications which indicated that the applicant's father, [redacted] and her mother, [redacted], were married and they resided together in the United States with the petitioner and her brother. *See Decision of the Director* at 3-4. The denial also informed the applicant that USCIS records show that [redacted] was admitted to the United States as the spouse of nonimmigrant exchange visitor, the petitioner's father, on October 16, 1998, and that she and the petitioner's father departed on May 28, 2008. *Id.* at 4. The director determined that the DCF was provided with false information regarding the petitioner's parents, that no documentation was submitted to the DCF to support the petitioner's claims, and that the petitioner was ineligible for SIJ classification. *Id.*

On appeal, counsel contends that the director's denial is based on faulty assumptions that are not supported by the evidence. *Memorandum in Support of Appeal*, at 3-5. Specifically, counsel contends that the director erroneously relied on the petitioner's birth certificate as evidence that her biological mother is [redacted], who was alive during the petitioner's infancy, contrary to the petitioner's claim that her biological mother died when she was an infant. Counsel surmises that the petitioner's father remarried after the death of the petitioner's birth mother, "and the 'mother' on the birth certificate is, in all likelihood, her stepmother." *Id.* at 5.

Here, the petitioner's birth certificate identifies the names of her parents. The certificate also indicates that the petitioner's birth "was registered at the Birth Registration of Oktyabri district, Ulaanbaatar city on [redacted]' approximately three months after her birth. On appeal,

counsel speculates that [redacted] is the petitioner's stepmother. However, the petitioner has presented no evidence to support her new claim that her birth certificate reflects the name of her stepmother instead of her biological mother. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (noting that statements or assertions by counsel are not evidence); *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) ("Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings."). Also, the record reflects that the petitioner stated that her mother's first name is [redacted] in her Application to Adjust Status, which undermines her claim on appeal. *See Form I-485*, filed Dec. 2, 2009. Further, counsel requested additional time to present documentation from the Mongolian Consulate to show that the person listed on the petitioner's birth certificate is not her biological mother. To date, however, nothing further has been submitted to the AAO. Accordingly, the petitioner has failed to demonstrate that the director's denial was premised on a faulty assumption regarding her biological mother.

Counsel correctly contends that the director failed to provide the petitioner with an opportunity to rebut the adverse information before denying the petition. *Memorandum in Support of Appeal*, at 5-6. Because the denial was based on derogatory information of which the petitioner was unaware, the regulations provide that she be advised of this fact and offered an opportunity to rebut the information before a final decision is rendered. *See* 8 C.F.R. § 103.2(b)(16)(i). Although the director committed procedural error, the AAO finds no resultant prejudice in this case. The denial provided the petitioner with a detailed description of the derogatory evidence underlying the adverse decision, and on appeal the petitioner had an opportunity to rebut the information and to present additional information on her own behalf. On appeal, the petitioner submitted copies of correspondence between her attorney and the Mongolian Embassy, a letter of recommendation from one of her Yale professors, and copies of other documents of record. However, the petitioner's submission on appeal does not rebut the evidence, fully described in the director's decision, indicating that the petitioner's biological mother is alive, remains married to her father and resided in the United States from 1998 to 2008 (six months before the dependency petition was filed); or that the petitioner's father acknowledged her as his child on his 1999, 2000 and 2009 visa applications. The petitioner provided no additional statements or competent evidence to explain the inconsistencies between this evidence and her claim that her biological mother died when she was an infant and that she has had no contact with her parents since 1999. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (attempting to explain or reconcile inconsistencies will not suffice unless competent objective evidence is submitted).

Finally, the petitioner contends that the director erred in substituting his judgment for that of the juvenile court. *Memorandum in Support of Appeal*, at 6. The contention lacks merit. Here, the director correctly found that the juvenile court's determination was uninformed because the DCF and the juvenile court were given incomplete information regarding the petitioner's family history. Given the inconsistent information regarding the petitioner's parents, and the petitioner's failure to reconcile these inconsistencies on appeal, the director's denial of the request for SIJ classification was proper. Without evidence that the juvenile court was apprised of all the pertinent facts regarding the petitioner's parents, USCIS cannot be assured that the petitioner sought the juvenile court dependency order primarily to obtain relief from abuse, neglect, abandonment or a similar basis under state law. *See TVPRA – SIJ Provisions Memo* at 3

(stating that the consent determination "is an acknowledgement that the 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 not shown by a preponderance of the evidence that she is eligible for the benefit. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.