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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

DATE:

OCT 25 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.

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 Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal will remain 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 petition accordingly. *Id.* In its May 6, 2011 decision dismissing the appeal, the AAO determined that the petitioner had not reconciled inconsistencies in the record regarding her mother and her relationship with her parents. Consequently, the petitioner failed to establish that the juvenile court had been apprised of all the relevant facts regarding her parents and that she had sought the dependency order primarily to obtain relief from abuse.

On motion, counsel reasserts the petitioner's eligibility for SIJ classification and claims that the inconsistencies regarding the petitioner's parents can be reconciled. Counsel also submits affidavits from the petitioner and her former, informal guardian; as well as a recent assessment of the petitioner's case with the Connecticut Department of Children and Families (DCF).

The AAO reviews these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the relevant evidence of record, including the additional documents submitted on motion, fail to establish that the SIJ petition is bona fide. The conflicting evidence and material inconsistencies of record regarding the petitioner's parents prevent a finding that the dependency order was sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily for the purpose of obtaining lawful immigration status.

Applicable Law

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, defines a special immigrant juvenile 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 modified the former “express” consent required for SIJ petitions. 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 [REDACTED] 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.

Pertinent Facts and Analysis

The record reflects that the petitioner was born in Mongolia on January 10, 1991. 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, the petitioner's juvenile court 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.*¹

DCF prepared a report 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 about to turn 18 years old, that she was "an intelligent and resourceful young lady who was able to obtain a full four year scholarship into Yale University," and that she had been cared for by another couple for the past nine years. *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*, 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 found that the petitioner's mother was deceased. *Id.* Additionally, the juvenile court determined that it was not in the petitioner's best interest to return to Mongolia because she was

¹ 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.

enrolled in college, wished to remain in her college town and that if returned to Mongolia, she would not know anyone except her abusive father.

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 additional evidence, which the petitioner submitted.

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 detailed 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, prior counsel contended 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. Prior counsel surmised 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."

The petitioner's birth certificate identifies her father as [REDACTED] and her mother as [REDACTED]. The certificate also shows that the petitioner's birth "was registered at the Birth Registration of [REDACTED] city on April 25, 1991," approximately three months after her birth. On motion, present counsel concedes that there is "confusion over the identity of the mother," but speculates that the petitioner's biological mother could have died and her father remarried in the three months between her birth and its registration. The record contains no documentation of the death of the petitioner's mother and her father's subsequent remarriage and the affidavits submitted on motion do not reconcile the inconsistencies of record regarding the identity of the petitioner's mother. The petitioner previously stated that her mother's first name is [REDACTED] in her Application to Adjust Status, filed on December 2, 2009. However, in her December 17, 2010 affidavit submitted on motion, the petitioner states that her biological mother died when she was an infant and she was raised by her grandmother until her grandmother died and her father took her to the United States to live with him and a Mongolian woman. The petitioner asserts, "I do not know my biological mother's name. I also do not know my father's wife's name. I did not know that the name on my birth certificate could be that of my father's new wife, which I now assume it to be."

In his June 3, 2011 affidavit, [REDACTED] states that he first met the petitioner when she was about eight years old and would come to his home to play with his son. [REDACTED] recounts that the petitioner later told him and his wife that her father and her father's wife were abusing her. [REDACTED] confronted the petitioner's father and threatened to report him to the police if he did not leave the petitioner under his and his wife's care. According to Mr. [REDACTED] the petitioner's father left her with him and his wife the next day and they had no further contact with him. [REDACTED] further states that the petitioner's father once told him that his wife was not the petitioner's mother and that before [REDACTED] obtained the petitioner's birth certificate he knew her father and his wife only by their nicknames. Mr. [REDACTED] explains that he, his wife and the petitioner all assumed that the woman identified on the petitioner's birth certificate was her biological mother.

On appeal, prior counsel requested additional time to present documentation from the Mongolian Consulate to show that the petitioner's biological mother was deceased, that her father remarried and that the woman named on the petitioner's birth certificate is not her biological mother. No such evidence has been received. On motion, present counsel initially requested additional time to submit an amended order from the juvenile court reflecting consideration of all the relevant facts about the petitioner's parents. However, in his June 20, 2011 letter, counsel later advised that the petitioner would not submit an amended dependency order.

The evidence submitted on motion fails to resolve the inconsistencies of record. As fully described in the director's decision and our prior decision on appeal, USCIS records indicate 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); and that the petitioner's father listed her as his child on his 1999, 2000 and 2009 visa applications. These records are inconsistent with the petitioner's claims that her biological mother died when she was an infant, that the woman identified on her birth certificate is not her biological mother and that she has had no contact with her father or his wife since approximately 1999.² The petitioner's present claims also contradict her prior statement on her Form I-485 that her mother's first name is [REDACTED] the woman identified as her mother on her birth certificate.

On motion, counsel asserts that the identity of the petitioner's mother is irrelevant to her eligibility because the juvenile court dependency order was based on a finding that the petitioner was abused and abandoned by her father and the statute does not require a SIJ to show that

² Counsel avers that the AAO is "in essence requiring her to contact her father . . . to prove their lack of contact since 1999," which violates the prohibition at section 287(h) of the Act against compelling an SIJ petitioner to contact his or her abuser. Our prior and present decisions contain no such requirement. The petitioner may, and has, submitted other, relevant evidence regarding her lack of contact with her parents, which has been fully considered in these proceedings. Counsel also claims that it is improper for us to consider the actions of the petitioner's father as represented on his visa applications because the juvenile court adjudged him abusive. However, USCIS may consider any relevant evidence of the petitioner's relationship with his or her family and the role of a parent in bringing the petitioner to the United States when determining whether or not to consent to the grant of special immigrant juvenile status. *See Yeboah v. U.S. Dept. of Justice*, 345 F.3d 216, 225 (3d Cir. 2003) (making a credibility determination regarding conflicting evidence is a within the agency's authority and not a reevaluation of the dependency order).

reunification with both parents is not viable. Counsel claims that by questioning the bona fides of the dependency order, the AAO is impermissibly going behind the state court's judgment. Counsel is mistaken. We do not question the court's judgment based on the limited facts to which it was presented at the time of the dependency order. As explained in our prior decision, the record indicates that the juvenile court was not apprised of all the relevant facts regarding the petitioner's parents. While the statute does not require the juvenile court to determine that reunification with both parents is not viable, the petitioner still bears the burden of proof to establish that her request for SIJ classification is bona fide and that she sought the dependency order primarily to obtain relief from her father's abuse and abandonment, rather than to gain lawful permanent residency. H.R. Rep. No. 105-405 at 130 (1997); *see also TVPRA – SIJ Provisions Memo* at 3; *SIJ Memo #3* at 2.

The juvenile court order in this case was based on the court's finding that the petitioner's mother was deceased and that it was not in her best interest to return to Mongolia because "she knows no one [in Mongolia], except possibly her abusive father" *Memorandum of Decision* at 4. The juvenile court's findings clearly show that it was not apprised of the evidence that the petitioner's mother is alive and resided in the United States from 1998 to 2008 (six months before the dependency petition was filed).

Counsel claims in the alternative that even if [REDACTED] is the petitioner's biological mother, that fact does not undermine the dependency order because [REDACTED] also abused the petitioner. The dependency order, however, made no such finding. The court's determinations that parental reunification was not viable and that it was not in the petitioner's best interest to return to Mongolia were based on the court's factual finding that the petitioner's mother was deceased. Accordingly, the order only addressed the abuse of the petitioner's father.

The petitioner bears the burden of proof to establish her eligibility. On motion, the petitioner has failed to establish that the AAO's prior decision was erroneous. The record shows that the juvenile court was not informed of all the relevant facts prior to issuing its dependency order. The record contains conflicting evidence and unresolved inconsistencies, which detract from the credibility of the petitioner's SIJ request. The present record does not support the consent of USCIS to a grant of SIJ classification in this case, as required by section 101(a)(27)(J)(iii) of the Act.

The petitioner bears the burden of proof to establish her eligibility. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Consequently, the prior decision of the AAO will be affirmed, the appeal will remain dismissed and the petition will remain denied.

ORDER: The May 6, 2011 decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed.