

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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DATE: NOV 02 2012 OFFICE: DENVER, CO FILE: [REDACTED]
[REDACTED]

IN RE: Self-Petitioner: [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]
[REDACTED]
[REDACTED]
[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 Denver, Colorado Field Office Director (the director) denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a 20-year-old 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), and as defined at section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J). When the petitioner was 17 years old, she was placed in the custody of the Denver, Colorado Department of Human Services (DDHS) and when she was 18 years old, the Denver Juvenile Court adjudicated her dependent and neglected. The petitioner remains in the custody of DDHS.

The director declined consent to the petitioner's request for SIJ classification because she concluded that the request was not bona fide. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief and additional evidence. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Review of the entire record, including the evidence and brief submitted on appeal, demonstrates that the petitioner is eligible for and merits classification as a special immigrant juvenile. The director's decision to the contrary shall be withdrawn.

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. Section 101(a)(27)(J) of the Act 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 [.]

Pertinent Facts and Procedural History

The applicant was born in Mexico on [REDACTED]. When the petitioner was 17 years old, she went to a shelter after being subjected to domestic violence by the father of her two young children. The shelter referred the petitioner to DDHS and she and her children were placed in the agency's custody on July 7, 2009. Later that month, the Denver Juvenile Court adjudicated the petitioner to be dependent and neglected. On May 13, 2010, when she was 18 years old, the Denver Juvenile Court entered an order affirming that the petitioner had been adjudicated dependent and neglected; remained in the custody of DDHS and eligible for foster care until the age of 21; and that reunification with her parents in Michigan was "not a viable option due to abuse, neglect, abandonment, or the ability of the State of Colorado to ensure that there are no safety concerns in the parental home." *Order, Denver Juv. Ct., Case [REDACTED] (May 13, 2010)*. The court further determined that it was not in the petitioner's best interest to return to Mexico because she had moved to the United States as a young child, she had no family support in Mexico, she had insufficient education and she resided with her two young, U.S. citizen children who were also in the custody of DDHS.

The petitioner filed a prior Form I-360 SIJ petition and a Form I-485 application to adjust status on June 20, 2010.¹ The director denied the prior Form I-360 because a DDHS report indicated that the petitioner had contacted her parents and she consequently "failed to show that reunification with [her] parents was impossible due to abuse, neglect, or abandonment."

On June 5, 2011, the Denver Juvenile Court entered a supplemental order containing the following finding:

[The petitioner's] parents reside in the State of Michigan. An interstate investigation was initiated by DDHS in an attempt to reunify [the petitioner] with her parents. . . . Based on the reports from DDHS and the previous GAL [Guardian Ad Litem], this Court found that reunification of [the petitioner] with either of her parents was not and is not a viable option due to abuse, neglect, abandonment, and the inability of the State of Colorado to ensure that there

¹ Receipt number [REDACTED]

are no safety concerns in the parental home. She remains in the care and custody of [D]DHS for that reason.

Specific Orders Supplementing Previous Orders, Den. Juv. Ct. Case No. [REDACTED] (Jun. 5, 2011).

The court also determined that the petitioner had been adjudicated dependent and neglected; that she was the victim of parental abuse, abandonment, and/or neglect; that she remained in the custody of DDHS and eligible for foster care until the age of 21; and that it was not in her best interest to be returned to Mexico. *Id.*

On September 6, 2011, when she was 19 years old, the petitioner filed the instant Form I-360 with the juvenile court's supplemental order as well as other evidence. The director again declined to consent to the grant of SIJ classification because she concluded that the petitioner had maintained contact with her parents and her request for SIJ classification was not bona fide. Counsel timely appealed. The record, as supplemented on appeal, establishes the petitioner's eligibility for SIJ classification and the director's decision shall be withdrawn for the following reasons.

Analysis

The director erroneously determined that the SIJ request was not bona fide. Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to "consent[] to the grant of special immigrant juvenile status." 8 U.S.C. § 1101(a)(27)(J)(iii). This consent determination "is an acknowledgement that the request for SIJ classification is bona fide,"² 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 or abandonment." H.R. Rep. No. 105-405, at 130 (1997).

In this case, the director misinterpreted this requirement by concluding that the petitioner sought "the classification of a SIJ 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 or abandonment." *Director's Decision* (Feb. 16, 2012) at p.3 (emphasis added). Clearly, the purpose of filing a request for SIJ classification is to obtain lawful permanent residency as section 101(a)(27)(J) of the Act defines an SIJ as "an immigrant." The issue is whether or not the juvenile court order, not the SIJ petition, was sought primarily to obtain relief from parental abuse, neglect or abandonment; rather than immigrant status. Congress has explained that the consent function was created to:

² Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs., et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, p. 3 (Mar. 24, 2009).

limit the beneficiaries of this provision to those juveniles for whom it was created, namely abandoned, neglected, or abused children, by requiring the Attorney General to determine that neither *the dependency order nor the administrative or judicial determination of the alien's best interest* 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) (emphasis added). *See also Special Immigrant Juvenile Petitions*, 76 Fed. Reg. 54978, 54980, 54985 (Sept. 6, 2011) (proposed rule at 8 C.F.R. § 204.11(c)(1)(i) specifying that the consent determination requires a showing that the state court order was sought primarily to obtain relief from abuse, neglect, abandonment or a similar basis under state law).

In making a consent determination, USCIS examines the juvenile court order only to determine if the record contains a reasonable factual basis for the court's order and that the order contains the requisite findings of dependency or custody; non-viability of parental reunification due to abuse, neglect or abandonment; and that return to the native country of the child or her parents is not in the petitioner's best interests pursuant to subsections 101(a)(27)(J)(i)-(ii) of the Act. USCIS is neither the fact finder nor an expert in regards to these issues of child welfare under various state laws. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. Section 101(a)(27)(J)(i)-(ii) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (referencing the determinations of a juvenile court or other administrative or judicial body).³

In this case, the record shows that the juvenile court order was sought primarily to obtain relief from parental neglect. The original and supplementary juvenile court orders contain all the requisite findings and the record provides a reasonable factual basis for the judicial determinations. The juvenile court orders explicitly state the facts forming the basis for the court's determinations. The original dependency petition and the DDHS reports to the juvenile court further show that the court was informed that the petitioner's parents did not prevent her from leaving their home as a minor and did not recognize the problems in allowing the petitioner to leave school, move in with her boyfriend and begin conceiving children at the age of 14.

While the director "concede[d] that [the petitioner met] the eligibility requirements under section 101(a)(27)(J) of the Act," the director nonetheless concluded that the request for SIJ classification was not bona fide because the supplemental court orders stated that the court received updates regarding the petitioner's parents' progress in their court-ordered treatment plan and the petitioner stated that she was still in contact with her parents. The director did not articulate the legal basis for her conclusion that continued parental contact rendered the request for SIJ classification not

³ *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*, 4-5 (May 27, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

bona fide and the record does not support that determination. To the contrary, the record shows that the petitioner sought the juvenile court orders primarily to obtain relief from parental neglect and parental contact was required by DDHS and the court. *See Order and Specific Orders*, Denver Juv. Ct., Case No. [REDACTED] (May 13, 2010 and Jun. 5, 2011). *See also* Report to the Juvenile Court, Denver Human Servs. Dept., Case No. [REDACTED] (Sept. 8, 2009) (Family Services Treatment Plan requiring the petitioner's parents to "maintain ongoing contact" with the petitioner). As explained by the petitioner's DDHS caseworker and her former GAL, DDHS was required to contact the petitioner's parents under Colorado law mandating a child's reunification with his or her parents whenever possible. *Letter of Jessica Bueno, DDHS Social Worker*, dated March 17, 2011; *Letter of [REDACTED]*, dated Nov. 10, 2010.⁴ The petitioner's case worker further recounted:

From the earliest stages of our investigation, it became clear that, while [the petitioner's] parents would participate verbally in discussions regarding their daughter's future, their failure to make any efforts to visit, financially support, and otherwise provide for their child's wellbeing, constituted neglect. [The petitioner's] parents have complied with court ordered telephonic contact with their daughter, but other than this minimal requirement, they have failed to take any additional steps to further their daughter's emotional and physical welfare.

Bueno Letter at p.1.

The case worker also noted that the petitioner's parents lived in a one-bedroom trailer with their two other children, living conditions under which DDHS could not approve parental reunification. *Id.* at pp.1-2. The petitioner's former GAL reiterated:

In the dependency and neglect case, the parents have consistently reported that they cannot have her home even if they wanted to. . . . They did not provide any financial assistance or otherwise at any point when she was pregnant or being abused or in a shelter as a teen with two infants. They cannot provide for her now and will not take her back. In fact they did not even appear by telephone at the last court hearing

Vigil Letter at pp. 1-2.

The evidence shows that the juvenile court was apprised of these and all other relevant facts before issuing its orders and the record contains no basis for the director to have looked behind the court order to conclude that the SIJ request was not bona fide. As is clear from the record in this case, parental contact does not necessarily contradict a judicial determination of parental neglect.

⁴ The record shows that [REDACTED] has since been appointed a magistrate judge for El Paso County in the Fourth Judicial Circuit of the Colorado State Courts.

Conclusion

The juvenile court orders in this case satisfy the requirements of subsections 101(a)(27)(J)(i)-(ii) of the Act. *De novo* review of the record as supplemented on appeal shows that the petitioner's primary purpose in seeking the juvenile court orders was to obtain relief from parental neglect. The preponderance of the evidence shows that the petitioner's request for SIJ classification is bonafide and that the agency's consent to the grant of SIJ status is warranted under subsection 101(a)(27)(J)(iii) of the Act. The director's decision to the contrary shall be withdrawn.

In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has met her burden and the appeal will be sustained. The February 16, 2012 decision of the director will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.