

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 15 2012

OFFICE: DENVER, CO

FILE:

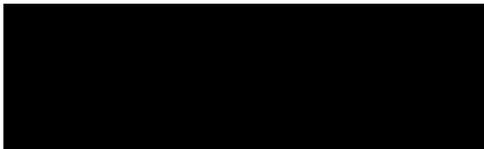


IN RE: Self-Petitioner:



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 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 14 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 eight years old he witnessed his father murder his mother. Upon his father's arrest and subsequent imprisonment, he was placed in the custody of the local human services agency and later adopted by his maternal grandparents.

The director determined that the petitioner's request for SIJ classification was not bonafide because the adoption order was later amended noting that the court retained limited jurisdiction, as required by the SIJ regulations. 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 SIJ classification. 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 [.]

The current regulation at 8 C.F.R. § 204.11(c)(5) requires that the juvenile court order specified at subsection 101(a)(27)(J)(i) of the Act remain in effect at the time of filing and throughout the adjudication of the SIJ petition.¹

Pertinent Facts and Procedural History

The applicant was born in Mexico on February 9, 1998. On April 7, 2006, when he was eight-years-old, the petitioner and his two brothers witnessed their father stab their mother, who later died from the wound to her chest. *Mesa County Department of Human Services Child's Adoptive Study*, Oct. 18, 2007, at 1. The petitioner's father was convicted of second degree murder and sentenced to 40 years of imprisonment. *Id.* at 2. At the time of the petitioner's mother's murder and his father's arrest, the Mesa County, Colorado Department of Human Services (MCDHS) was granted custody of the petitioner and his brothers and the agency subsequently placed the children in the home of their maternal grandparents. *Id.* On June 15, 2006, the Mesa County, Colorado District Court (juvenile court) adjudicated the petitioner to be dependent and neglected. *Id.*; *Affidavit of Petitioner's Adoption Attorney, Richard M. Hall*, Mar. 2, 2012; *Adoption Decree*, Mesa Cnty. Dist. Ct., No. 07JA99 (Feb. 21, 2008). On April 4, 2007, the juvenile court terminated the petitioner's father's parental rights. *Id.* On February 21, 2008, the juvenile court granted the maternal grandparents' adoption of the petitioner. *Adoption Decree; Affidavit of* [REDACTED]

On September 21, 2010, the juvenile court entered an order containing the following findings:

- 3. Reunification with the child's parents is no[] longer a viable option due to dependency and neglect. Specifically, the mother is deceased and the father's rights have been terminated.
- 4. It is not in the best interest of the child to be returned to Mexico because he has no caregivers in his home country and would end up homeless.

¹ The proposed rule amending the SIJ regulations provides age-out protection for petitioners whose dependency order is valid at the time of filing the SIJ petition, but later expires because the petitioner reaches the age of majority in the applicable state before the SIJ petition is adjudicated. See Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54980 (proposed Sept. 6, 2011) (amending the eligibility requirement at revised 8 C.F.R. § 204.11(b)(1)(iv)).

5. This Court will maintain limited jurisdiction pursuant to 8 C.F.R. § 204.11(c)(5) to ensure that the child satisfies the requirements for classification as a special immigrant juvenile.

Order, Mesa Cnty. Dist. Ct., [REDACTED] (Sept. 21, 2010).

The petitioner filed his request for SIJ classification (Form I-360 Petition for Special Immigrant) on February 11, 2011 when he was 13 years old. On February 2, 2012, director denied the petition based on her determination that the petitioner procured the 2010 juvenile court order in order to obtain lawful permanent resident status, not to seek relief from parental abuse, neglect or abandonment. On appeal, counsel submits a copy of the March 2, 2012 order of the juvenile court specifying that the factual findings of the child's best interest and the non-viability of parental reunification due to neglect applied *nunc pro tunc* to the original adoption decree of February 21, 2008. *Order*, Mesa Cnty. Dist. Ct., [REDACTED] (Mar. 2, 2012). 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 A bona fide request means 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 [,] 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* at p. 2. 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 the juvenile court order, *not* the SIJ petition, was sought primarily to obtain relief from parental abuse, neglect or abandonment. H.R. Rep. No. 105-405 at 130 (1997). *See also* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54979 (proposed Sept. 6, 2011) (discussing Congressional intent to tie SIJ eligibility "more directly to judicial findings of abuse, abandonment, or neglect"). In this case, the record overwhelmingly

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).

shows that the juvenile court order was sought primarily to obtain relief from parental neglect in the wake of the murder of the petitioner's mother by his father.

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 reunification due to abuse, neglect or abandonment; and that return is not in the petitioner's best interest pursuant to subsections 101(a)(27)(J)(i)-(ii) of the Act. USCIS is not the fact finder in regards to these issues of child welfare under state law. 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 juvenile court order contains all the requisite findings and the record provides a reasonable factual basis for the judicial determinations. The MCDHS adoptive study reported the factual basis for the initial 2008 adoption decree: the petitioner and his siblings witnessing the murder of their mother by their father; the ensuing emotional and psychological effects of this event on the boys, including the petitioner's diagnosis with Post-Traumatic Stress Disorder and receipt of individual and family therapy; the petitioner's father's conviction for second degree murder and sentence to 40 years of imprisonment; the termination of his father's parental rights; MCDHS's determination that the petitioner was eligible for a state and county subsidized adoption and its recommendation that the petitioner be adopted by his maternal grandparents. The 2008 adoption decree shows that the court reviewed and considered MCDHS's recommendation and consent to the adoption. *Adoption Decree* at ¶ 5. The 2008 decree further states that petitioner had previously been adjudicated dependent and neglected and was eligible for adoption due to the termination of his father's parental rights. *Id.* at ¶¶ 3-4.

The director nonetheless concluded that the petition for SIJ classification was not bona fide because the 2010 juvenile court order making the requisite determinations of the petitioner's best interest and the non-viability of parental reunification was not entered until two years after the adoption decree. The 2012 juvenile court order submitted on appeal clarifies that those findings were effective *nunc pro tunc* to the original 2008 adoption decree. Yet even absent the 2012 order, the record demonstrates that the 2008 adoption decree was sought primarily to obtain relief from parental neglect. The record shows that the juvenile court was fully informed of the petitioner's father's murder of his mother, had already adjudicated the petitioner to be dependent and neglected, and had terminated his father's parental rights. *Adoption Decree* at ¶¶ 3-5. In the 2008 decree, the juvenile court further determined that the adoption was in the petitioner's best interest. *Id.* at ¶ 10. Implicit in that finding is the court's recognition that it would not be in the

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).

petitioner's best interest to be returned to Mexico where he had no relatives and away from his grandparents and other family members in the United States. *Affidavit of [REDACTED] at ¶ 17; Declaration of [REDACTED] of the Petitioner* (Feb. 29, 2012) (explaining that the petitioner was brought to the United States as an infant and the family has no relatives left in Mexico).

The director further determined that the SIJ request was not bonafide because in the 2010 order, the court retained limited jurisdiction to ensure the petitioner's eligibility for SIJ classification. The director overlooked the fact that the court's jurisdiction over a dependent child normally ceases upon entry of a final adoption order. *See Affidavit of [REDACTED] at ¶ 20.* In this case, the court nonetheless retained limited jurisdiction in order to satisfy the regulatory requirement that the custody order remain in effect throughout the adjudication of the SIJ petition. 8 C.F.R. § 204.11(c)(5).⁴ The court's action did not nullify the protective purpose of the adoption decree.

Conclusion

De novo review of the record as supplemented on appeal shows that the petitioner's primary purpose in seeking the adoption decree was to obtain relief from parental neglect after his mother's death and his father's imprisonment for her murder. That purpose was not negated by the later juvenile court orders making the specific findings and retaining the limited jurisdiction required to establish the applicant's eligibility for SIJ classification. The 2008 adoption decree, as supplemented *nunc pro tunc* by the 2010 and 2012 juvenile court orders, satisfies the requirements of subsections 101(a)(27)(J)(i)-(ii) of the Act. The preponderance of the evidence shows that the petitioner's request for SIJ classification is bona fide and that USCIS consent to the grant of SIJ status is warranted under subsection 101(a)(27)(J)(iii) of the Act.

In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish his 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 his burden and the appeal will be sustained. The February 2, 2012 decision of the director will be withdrawn and the petition will be approved.

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

⁴ The proposed rule at 8 C.F.R. § 204.11(b)(2) clarifies that a juvenile who has been adopted or placed under guardianship after having been found dependent upon a juvenile court or placed in the custody of a state agency (or an individual appointed by a state or juvenile court) will remain eligible for SIJ classification. 76 Fed. Reg. at 54980, 54985.