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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

C 6

[Redacted]

Date: Office: MOUNT LAUREL, NJ FILE: [Redacted]

SEP 18 2012

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Mount Laurel, New Jersey Field Office Director (the director), 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 21-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). The director denied the petition for lack of evidence of the requisite juvenile court dependency order and best-interest determination. On appeal, the petitioner submits additional evidence and asserts that she is still under the custody of the New Jersey Division of Youth and Family Services (DYFS).

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 March 29, 1991. The petitioner's mother died on July 15, 1992 and her father died on March 31, 1993. The record shows that on April 13, 2008 when the

petitioner was 17 years old, she was placed in the custody of DYFS. The DYFS complaint for custody stated that the petitioner told DYFS staff that after her parents died, she was raised by her siblings in Mexico and decided to come to the United States to work after finishing secondary school. The applicant recounted that she was smuggled into the United States in approximately March 2008 and went to New Jersey to live with her cousin. On September 29, 2008, the Superior Court of New Jersey, Cumberland County, Chancery Division, Family Part (juvenile court), terminated the DYFS custody litigation because the petitioner had returned home with her cousin and remained in his legal and physical custody. In December 2008, the petitioner was removed from her cousin's home and returned to DYFS custody pursuant to DYFS's complaint asserting that the petitioner's cousin had fought with her regarding money she owed him and she did not feel safe in his home. On March 30, 2009, the juvenile court ordered the DYFS custody litigation terminated because the petitioner had turned 18, the age of majority in New Jersey. On June 9, 2010, the juvenile court ordered termination of the child placement review in the petitioner's case because the petitioner was no longer a child and the court lacked jurisdiction to review her placement. *See* N.J. Stat. Ann. § 30:4C-52(a) (West 2012) (defining child as "any person less than 18 years of age" for purposes of the Child Placement Review Act).

The petitioner filed the instant Form I-360 on October 21, 2011 when she was 20 years old. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of evidence of a juvenile court dependency order. The petitioner, through her prior representative, responded with a copy of DYFS's December 9, 2008 complaint for custody. Because the complaint was not accompanied by the requisite juvenile court order, the director denied the petition for failure to meet any of the requirements for SIJ classification.¹

On appeal, the petitioner asserts that she is "still under DYFS" and submits copies of all of the relevant juvenile court documents in her case. These documents fail to establish the petitioner's eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

Analysis

While the record shows that the petitioner was formerly under DYFS custody pursuant to juvenile court orders in April and December 2008, the petitioner was no longer in DYFS custody at the time her Form I-360 was filed in 2011. The petitioner's DYFS custody litigation was terminated on March 30, 2009 after she turned 18 years old. The last juvenile court order in her case was issued in June 2010 and terminated her child placement review for lack of jurisdiction because she had turned 18 and was no longer a child under New Jersey law. Consequently, the

¹ In the NOID and the February 28, 2012 decision denying the petition, the director mistakenly quoted the regulation at 8 C.F.R. § 204.11(d)(2) as stating the requirements for SIJ classification. This portion of the regulations was superseded by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008), which 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).

petitioner does not meet the first requirement of subsection 101(a)(27)(J)(i) of the Act because no juvenile court dependency or custody order was in effect when her Form I-360 petition was filed.

Even if the petitioner had remained in DYFS custody at the time her Form I-360 was filed, the relevant evidence would still be insufficient to establish her eligibility for SIJ classification. None of the juvenile court orders state that the petitioner's reunification with one or both of her parents was not viable due to parental abuse, neglect, abandonment or a similar basis under state law. While the record indicates that the petitioner's parents both died when she was a young child, the juvenile court orders lack the non-viability determination required by statute. Accordingly, the petitioner has not met the second requirement of subsection 101(a)(27)(J)(i) of the Act. The juvenile court orders also lack any finding that it was in the petitioner's best interest not to return to Mexico, as required by subsection 101(a)(27)(J)(ii) of the Act.

Conclusion

The relevant evidence submitted below and on appeal fails to demonstrate that any juvenile court dependency or custody order was in effect at the time this petition was filed. The juvenile court orders also lack the requisite determinations of the non-viability of parental reunification and that it is not in the petitioner's best interest to be returned to Mexico. Consequently, the petitioner does not meet subsections 101(a)(27)(J)(i) and (ii) of the Act and the appeal will be dismissed.

In these 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.