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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:

Office: NEWARK, NJ

FILE:



SEP 18 2012

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.

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Newark, New Jersey Field Office Director (the director), revoked the approval of 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 an 18-year-old citizen of Ecuador 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 initially approved the petition, but subsequently revoked that approval on notice because the family court order upon which the petition was based lacked two determinations required by statute. On appeal, counsel asserts that the evidence submitted below established the petitioner's eligibility and the director's revocation was improper.

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 petitioner was born on December 31, 1993 in Ecuador. The petitioner entered the United States on June 11, 2008 without inspection or admission. The petitioner was initially placed

under the custody of the Office of Refugee Resettlement, Division of Unaccompanied Children's Services (ORR). On August 2, 2008, ORR released the petitioner into the custody of a family friend. On December 1, 2008, the New Jersey Superior Court, Chancery Division, Family Part (juvenile court) ordered temporary custody granted to the petitioner's family friend "with consent of [the petitioner's] natural parents." On February 2, 2009, the juvenile court ordered sole legal custody granted to the petitioner's family friend.

The petitioner filed this Form I-360 on March 15, 2009 and the director initially approved the petition. At the petitioner's interview with a U.S. Citizenship and Immigration Services (USCIS) officer on January 7, 2010 in connection with her application to adjust status (Form I-485), the officer requested copies of the court order with the determinations required by subsections 101(a)(27)(J)(i) and (ii) of the Act. In a letter dated April 9, 2010, counsel explained that no such order was available to the petitioner, but that the requisite determinations were inherent in the custody order pursuant to New Jersey law. On December 5, 2011, the director issued a notice of intent to revoke (NOIR) approval of the Form I-360 SIJ petition because the custody order contained no determination that the petitioner's reunification with one or both of her parents was not viable due to abuse, neglect, abandonment or a similar basis under state law; and no determination that it would not be in the petitioner's best interest to be returned to Ecuador. The director revoked approval of the Form I-360 petition on January 31, 2012 and counsel timely appealed.

On appeal, counsel asserts that the documentation submitted below established the petitioner's eligibility and that the director improperly revoked approval of the Form I-360. On the Form I-290B, Notice of Appeal, which counsel dated February 28, 2012, counsel stated that he would submit a brief and/or additional evidence within 30 days. To date, over six months later, the AAO has received no such brief or evidence from counsel. The present record and counsel's claims on appeal fail to establish the petitioner's eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

Analysis

The director revoked approval of the Form I-360 because the petitioner was ineligible at the time of filing. However, the regulations only permit automatic revocation of the approval of an SIJ petition upon certain changed circumstances such as the marriage of the petitioner.¹ 8 C.F.R. § 205.1(a)(iv). When it later comes to the attention of USCIS that an SIJ petition was approved in error, the proper course of action is to reopen the Form I-360 upon service motion pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii), grant the petitioner 30 days to submit a brief, and issue a new decision denying the petition if the petitioner's brief fails to establish his/her eligibility. Despite the director's procedural error, the record reveals no resultant prejudice to the petitioner. Through the director's RFE and NOIR, the petitioner was provided two opportunities to supplement the record and the petitioner has been afforded a third opportunity to demonstrate her eligibility on appeal.

¹ The revocation authority at section 205 of the Act, 8 U.S.C. § 1155, only applies to petitions approved under section 204 of the Act, 8 U.S.C. § 1154, and is inapplicable to SIJ petitions, which are approved under section 203(b)(4) of the Act.

The director made a second error by finding the petitioner ineligible because the custody order in this case contained no judicial determination that reunification with the petitioner's parents was not viable due to abuse, neglect, abandonment or a similar basis under state law. Although this is now a statutory eligibility requirement for SIJ classification at subsection 101(a)(27)(J)(i) of the Act, the amendment to this subsection adding this requirement did not take effect until March 23, 2009, after this petition was filed. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, § 235(d),(h) (Dec. 23, 2008). 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*, 2 (Mar. 24, 2009).

Nonetheless, we find no error in the director's ultimate determination that the petitioner is ineligible for SIJ classification. Prior to the 2008 amendment, subsection 101(a)(27)(J)(i) of the Act required that the special immigrant juvenile either have been declared dependent on the juvenile court or been legally committed to or placed under the custody of a state agency and that the juvenile court had deemed the individual eligible for "long-term foster care due to abuse, neglect, or abandonment." 8 U.S.C. § 1101(a)(27)(J)(i) (2007). The regulation defined "eligible for long-term foster care" as a juvenile court determination "that family reunification is no longer a viable option." 8 C.F.R. § 204.11(a). The custody orders in this case contain no such determinations. To the contrary, the temporary custody order explicitly stated that custody of the petitioner was granted to the family friend "with consent of [her] natural parents." The juvenile court orders contain no determinations of abuse, neglect or abandonment or the non-viability of family reunification.

The record also lacks any evidence of a juvenile court determination that it would not be in the petitioner's best interest to return to Ecuador, as required by section 101(a)(27)(J)(ii) of the Act, both before and after the 2008 amendments to the statute. 8 U.S.C. § 1101(a)(27)(J)(ii) (as in effect from 2007 to 2012).

Conclusion

The relevant evidence submitted below and counsel's claims on appeal do not establish the petitioner's eligibility for SIJ classification under section 101(a)(27)(J) 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.