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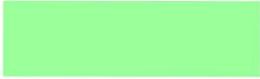


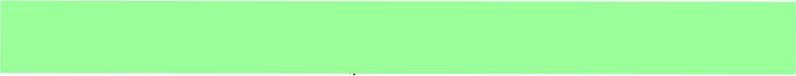
U.S. Citizenship  
and Immigration  
Services



Date: **APR 15 2013**

Office: NEWARK, NJ

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:

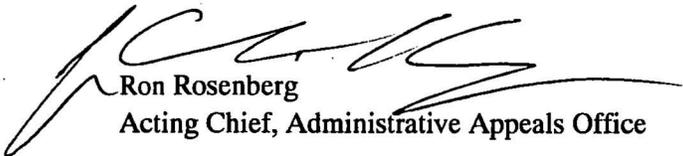


INSTRUCTIONS:

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.

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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Newark, 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 17-year-old citizen of Egypt who seeks classification as a special immigrant juvenile (SIJ) as defined at section 101(a)(27)(J) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(27)(J), and pursuant to section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4). The director denied the petition because he found that the petitioner sought SIJ classification primarily for immigration purposes. On appeal, counsel submits a brief reasserting the petitioner's eligibility.

*Applicable Law*

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles, defined in section 101(a)(27)(J) of the Act 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*

The record reflects that the petitioner was born in Egypt on [REDACTED]. On August 17, 2011, the petitioner's aunt filed a petition for guardianship of the petitioner with the Hudson County, Superior Court of New Jersey, Chancery Division. On September 1, 2011, the Court appointed the petitioner's aunt as guardian of the petitioner when the petitioner was 16 years old. The court

found that the petitioner “fled from Egypt and came to the United States to escape the dangers he faced in his country stemming from the lack of supervision and abandonment of his parents.” The petitioner filed the instant Form I-360 on September 15, 2011. The director denied the petition after reviewing counsel’s response to a Notice of Intent to Deny (NOID) and counsel timely appealed.

On appeal, counsel submits a brief asserting that the petitioner was abandoned by his parents and did not seek the guardianship order primarily for an immigration benefit. Counsel’s arguments fail to establish the petitioner’s eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

### *Analysis*

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to consent to the grant of SIJ status. This consent determination is an acknowledgement that the request for SIJ classification is bona fide, which means that the juvenile court order and the best-interest determination were sought primarily to gain relief from parental abuse, neglect, abandonment or a similar basis under state law, and not primarily to obtain immigrant status.<sup>1</sup> When adjudicating an SIJ petition, USCIS examines the juvenile court order only to determine if it contains the requisite findings of dependency or custody; nonviability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner’s best interests, as stated in section 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). Accordingly, USCIS examines the relevant evidence only to ensure that the record contains a reasonable factual basis for the court’s order.<sup>2</sup>

Although the juvenile court order in this case includes the requisite nonviability-of-reunification and best-interest determinations, the record does not provide a reasonable factual basis for the court’s determination that the petitioner was abandoned by his parents. To support her guardianship petition, the petitioner’s aunt submitted an affidavit from his parents and a letter from the priest of the [REDACTED] that the petitioner attended in Egypt. The parents’ affidavit states that they authorize the petitioner’s aunt to take care of him because of the worsening economic situation in Egypt. The two-sentence letter from the priest briefly states that the petitioner attended church and was psychologically harmed by a 2011 bombing incident. The director concluded that the petitioner sought the juvenile court order primarily to obtain lawful permanent residency in the United States rather than to gain relief from his parents’ abuse,

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<sup>1</sup> H.R. Rep. No. 105-405 at 130 (1997). *See also* 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).

<sup>2</sup> *See* USCIS Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions, 4-5 (May 25, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court’s order, USCIS should not question the court’s rulings).

neglect or abandonment and issued a Request for Evidence and Notice of Intent to Deny (NOID) the petition. In response, counsel submitted an affidavit from his aunt who stated that she filed for guardianship of the petitioner so that he would be safe and not subjected to his parents' anger over their lack of money. The petitioner's aunt explained that it would be "very dangerous" for the petitioner to return to Egypt because after the revolution "things have been very dangerous especially for children." She requested that the petition be granted so that the petitioner would "not face the harsh reality of a country in turmoil." The record does not contain any statements from the petitioner.

The petitioner bears the burden of proof to establish that his request for SIJ classification is bona fide and merits the agency's consent. The petitioner must show that he sought the juvenile court order primarily to obtain relief from his parents' abuse, neglect, or abandonment, and not primarily 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. When determining whether or not to consent to the grant of SIJ status, USCIS may consider any evidence of the role of a parent in arranging for the petitioner to travel to the United States or to petition for SIJ classification. *See Yeboah v. U.S. Dept. of Justice*, 345 F.3d 216, 225 (3d Cir. 2003) (making a credibility determination regarding conflicting evidence is within the agency's authority and not a reevaluation of the dependency order). Here, the record shows that the petitioner's parents arranged for his travel to the United States to reside with his aunt. Their affidavit specifically authorizes the petitioner's aunt to provide for him in the United States. On appeal, counsel asserts that by sending the petitioner to the United States by himself, he was abandoned by his parents and is applying for SIJ classification to gain relief from that abandonment. However, the affidavit from the petitioner's parents, the affidavit from his aunt, and the letter from the priest indicate that the petitioner's parents sent him to the United States to ensure his well-being given the worsening economic and political situation in Egypt after the Arab Spring revolution. Although the petitioner received the requisite juvenile court order, material evidence does not support the court's finding of parental abandonment. Rather, the record shows that the petitioner sought the order primarily to obtain lawful permanent residency in the United States and protection from the unstable country conditions in Egypt. Consequently, 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.

### *Conclusion*

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

**ORDER:** The appeal is dismissed.