

(b)(6)

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

Date: **APR 29 2013**

Office: SAN FRANCISCO, CA

FILE: [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:

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 San Francisco, California 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 because the juvenile court order had terminated before the SIJ petition was filed and because the order did not contain the requisite determinations that the petitioner's reunification with one or both of his parents was not viable due to abuse, abandonment, neglect or a similar basis under state law and that it was not in the petitioner's best interest to be returned to Mexico. On appeal, counsel asserts that the court order was still in effect when this petition was filed, but he does not address the remaining grounds for denial.

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, which 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

Pertinent Facts and Procedural History

The petitioner was born on October 10, 1991 in Mexico and later entered the United States without inspection, admission or parole. In juvenile court delinquency proceedings on February 28, 2008, the Superior Court of California, San Mateo County, sustained two counts of the petitioner's violation of misdemeanor battery under section 242 of the California Penal Code (CPC). The petitioner was declared a ward of the juvenile court, placed under the supervision of the probation department and ordered to serve an additional 45 days of therapeutic detention. The juvenile court further ordered that the petitioner "shall not strike or hit, nor be verbally abusive or threatening, to any member of his family." On September 9, 2008, the juvenile court sustained a third charge of the petitioner's battery in violation of CPC § 242. In a disposition

dated September 26, 2008, the juvenile court ordered the petitioner to continue as a ward of the court and ordered him to serve 85 days in juvenile hall with credit for 40 days served. A May 9, 2011 letter from the San Mateo County, California Probation Department states that the petitioner's probation terminated on June 17, 2010.

The petitioner filed this Form I-360 on May 23, 2011. The director subsequently issued a Request for Evidence (RFE) of a juvenile court order with the requisite determinations of the petitioner's best-interest and nonviability of parental reunification, as required by subsections 101(a)(27)(J)(i) and (ii) of the Act. Because the record indicated that the petitioner's wardship and probation had terminated before the Form I-360 petition was filed, the director also requested evidence that the petitioner remained dependent upon the juvenile court. In response to the RFE, counsel submitted a copy of the juvenile court's February 28, 2008 order, which the director found insufficient to establish the petitioner's eligibility for SIJ classification. The director denied the petition on January 19, 2012 and counsel timely appealed.

On appeal, counsel asserts that the petitioner's wardship was still in effect when his Form I-360 was filed and that the director erroneously required current wardship in violation of the Settlement Agreement in the case of *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005), of which he submits a copy. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record as supplemented on appeal fails to establish the petitioner's eligibility and the appeal will be dismissed for the following reasons.

Analysis

We find no error in the director's determination that the petitioner was not the subject of a valid juvenile court order in effect at the time this petition was filed, as required by section 101(a)(27)(J)(i) of the Act and the regulation at 8 C.F.R. § 204.11(c)(5). On appeal, counsel claims that the director erroneously relied on a June 17, 2010 memorandum letter from a San Mateo County Deputy Probation Officer which states that the petitioner's "Wardship/Probation Terminated Effective 6/17/10." Counsel asserts that the letter was merely a recommendation to the juvenile court, which was not acted upon by the court and that the probation department had no authority to end the petitioner's wardship. Counsel does not, however, submit any evidence that the juvenile court extended the petitioner's wardship past the terms and conditions of the September 26, 2008 disposition. Counsel also does not address the May 9, 2011 letter from the San Mateo, California Probation Department which confirms that the petitioner's probation terminated on June 17, 2010. The record thus shows that the petitioner was no longer a ward of, or otherwise dependent on, the juvenile court at the time his Form I-360 was filed.

On appeal, counsel also asserts that the director erroneously imposed a "current ward status" requirement, which was not part of the *Perez-Olano* settlement agreement. Counsel's reliance on the settlement agreement is misplaced. The regulation at 8 C.F.R. § 204.11(c)(5) requires that the juvenile court dependency order be in effect at the time an SIJ petition is filed. The *Perez-Olano* settlement agreement prevents U.S. Citizenship and Immigration Services (USCIS) from denying or revoking the approval of certain SIJ petitions based on age or dependency status if the petitioner was less than 21 years of age and the subject of a juvenile court dependency order

valid at the time the petition was filed, but which later terminated due to the petitioner's age. See *Perez-Olano v. Holder*, No. CV 05-3604, 7-8 (C.D. Cal. 2005) (Settlement Agreement). This age-out protection only applies to those petitioners who were the subject of a valid dependency order at the time they filed the Form I-360. *Id.* The *Perez-Olano* settlement agreement does not apply to this case because the petitioner was no longer dependent on the juvenile court when his Form I-360 was filed.

The *Perez-Olano* settlement agreement is also inapplicable because regardless of the date the petitioner's wardship terminated, the juvenile court orders in this case lack the determinations required for SIJ classification. The petitioner was the subject of juvenile delinquency proceedings due to his battery offenses and was ordered not to commit further physical or verbal abuse against his family members. The juvenile court orders contain no determination that the petitioner's reunification with one or both of his parents was not viable due to their abuse, neglect, abandonment, or a similar basis under state law, as required by subsection 101(a)(27)(J)(i) of the Act. The record also lacks any judicial or administrative determination that it would not be in the petitioner's best interest to be returned to Mexico, as required by subsection 101(a)(27)(J)(ii) of the Act. Counsel does not address these grounds of ineligibility on appeal and we find no error in the director's determination that the petitioner does not meet these requirements.

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. 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.