



**U.S. Citizenship
and Immigration
Services**

(b)(6)

Date: **AUG 22 2013**

Office: SANTA ANA, CA

FILE: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

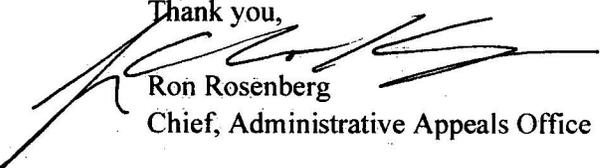
PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The Field Office Director, Santa Ana, California (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 sustained.

The petitioner claims she is a 20-year-old citizen of [REDACTED] who seeks classification as a special immigrant juvenile (SIJ) pursuant to sections 101(a)(27)(J) and 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The director denied the petitioner’s request for SIJ classification because she failed to establish her age and identity. On appeal, the petitioner, through counsel, submits a brief.

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.¹ 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

¹ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, 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 [REDACTED], 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) (hereinafter *TVPRA – SIJ Provisions Memo*). The SIJ provisions of the TVPRA are applicable to this appeal. See section 235(h) of the TVPRA.

(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 petitioner claims she was born in [REDACTED] on June 14, 1993. On January 6, 2010, the petitioner was apprehended at the [REDACTED] border when she attempted to enter the United States. On February 8, 2011, the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR) released the petitioner into the custody of [REDACTED] who was listed as a family friend in [REDACTED]

On May 19, 2011, the Superior Court of [REDACTED] (juvenile court) placed the petitioner under the custody of [REDACTED]. The petitioner filed this Form I-360, Petition for Special Immigrant, on June 8, 2011, but did not submit a birth certificate. The director subsequently issued a notice of intent to deny (NOID) the petition because the petitioner failed to establish her age and identity. The petitioner, through counsel, responded with additional evidence which the director found insufficient to establish that the petitioner was eligible for SIJ classification. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief asserting that the director's decision is not supported by the record. 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 brief submitted on appeal, demonstrates that the petitioner is eligible for and merits classification as a special immigrant juvenile.

Analysis

On appeal, counsel argues that the director erred in his finding that the petitioner failed to establish her age and identity and that due to the current state of affairs in [REDACTED], the petitioner submitted sufficient evidence establishing her age and identity in lieu of an official birth certificate. The relevant evidence in the record contains the petitioner's affidavit, affidavits from family friends, and dental examination results from the [REDACTED]. The director found that the affidavits contained insufficient details to establish the petitioner's age and further found that because the petitioner used various aliases when attempting to enter the United States, she did not establish her identity. The director also discounted the dental examination results which determined that the examined patient was less than 18 years old because the patient's name was listed as [REDACTED] the petitioner's alias, rather than her claimed real name.

The AAO takes administrative notice of the country conditions in [REDACTED] and the Department of State Foreign Affairs Manual's (FAM) determination that it is impossible for immigrant visa applicants to obtain original documents held by the former government of [REDACTED]. The

submitted affidavits demonstrate that the affiants knew or knew of the petitioner and her family. Ms. [REDACTED] stated that she was a childhood friend of the petitioner and that they attended the same [REDACTED] school from 2001 to 2003. The petitioner further submitted affidavits from friends of her parents who attested to having knowledge of her birth or knowing her as a child. Additionally, the record reflects that the petitioner used two aliases in her attempts to enter the United States and that she was fingerprinted in January of 2010 while using the name [REDACTED]. The petitioner's Office of Refugee Settlement (ORR) Verification of Release Form includes a photograph of the petitioner and lists her name as [REDACTED] and her actual name as an alias. The dental examination results submitted with the ORR release form for [REDACTED] are also consistent with the record, which establishes that [REDACTED] is an alias of the petitioner. Consequently, in light of the country conditions in [REDACTED] the director's determinations regarding the petitioner's inability to obtain sufficient corroborating evidence to establish her age and identity were erroneous and shall be withdrawn. The record shows that the petitioner was a juvenile at the time of the juvenile court order and when she filed her SIJ petition.

The petitioner has also met all the remaining requirements for SIJ classification. 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.² 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.³

In this case, the court order dated May 19, 2011 contains the requisite findings and the record provides a reasonable factual basis for the juvenile court order. The record contains a petition for guardianship and affidavits from the petitioner and her guardian. The petition for guardianship describes the circumstances surrounding the death of petitioner's parents in [REDACTED] and her living conditions after their death. In her self-affidavit, the petitioner credibly recounted how she found out about her father's death and how her mother subsequently passed

² 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).

³ 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).

away due to breast cancer. She described living with her two older sisters who were later abducted by a terrorist group, thereby leaving the petitioner, a minor, alone without any family in [REDACTED]. The petitioner's guardian also attests to her age, identity and need for protection from parental abandonment.

The petitioner has shown by a preponderance of the evidence that her request for SIJ classification is bona fide because she sought the juvenile court order primarily to obtain relief from her parental abandonment. The juvenile court order contains all the requisite determinations, and the record provides a reasonable factual basis for the court's order. Accordingly, the petitioner is eligible for and merits special immigrant juvenile classification. The director's decision to the contrary shall be withdrawn.

Conclusion

In this case, as in all visa petition 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has met her burden. The appeal will be sustained. The January 25, 2013 decision of the director will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.