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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

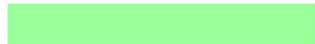


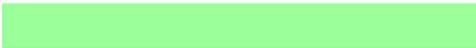
U.S. Citizenship
and Immigration
Services



DATE: **AUG 22 2013**

OFFICE: JACKSONVILLE, FL



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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Jacksonville, Florida Field Office Director (the director) denied the special immigrant visa petition and the Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted and the appeal will remain dismissed.

The petitioner is a 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), and as defined at section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J). On February 23, 2012, the [REDACTED] issued a juvenile dependency order stating the petitioner's date of birth as May 13, 1994. The petitioner filed the instant Form I-360, Petition for Special Immigrant, on March 30, 2012. The director denied the petition because the record contained conflicting evidence of the petitioner's date of birth, which indicated that he was not a juvenile at the time the dependency order was issued. On appeal, counsel submitted a brief and additional evidence. On June 13, 2013, the AAO dismissed the appeal and counsel timely filed the present motion to reopen and reconsider.

On motion, counsel cites no binding case law or precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Counsel also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. *See* 8 C.F.R. § 103.5(a)(3) (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

Counsel's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Counsel claims that the petitioner was a juvenile at the time of the dependency order and he submits a copy of the petitioner's new Mexican passport issued on June 26, 2013, which states the petitioner's date of birth as May 13, 1994. Accordingly, the motion to reopen is granted.

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 [.]

To be classified as an SIJ, an alien must be a child on the date the Form I-360 SIJ petition is filed. 8 C.F.R. § 204.11(c)(1) - (2). A child is defined as an unmarried person under the age of 21. Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). As long as an SIJ petition is filed before the child turns 21, the petitioner will not “age out” and the petition may not later be denied on the basis of the petitioner's age. Section 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457 (Dec. 23, 2008). However, individual state laws may define a child as a person less than 21 years of age for purposes of state juvenile court proceedings and jurisdiction. In this case, Florida defines a child as an individual under the age of 18. Fl. Stat. Ann. § 39.01(12) (West 2012). Florida courts generally retain jurisdiction over a juvenile “until the child reaches 18 years of age.” Fl. Stat. Ann. § 39.013(2) (West 2012). Florida courts may retain limited jurisdiction over an SIJ petitioner whose immigration case remains pending until the child turns 22, but only if the court initially obtained jurisdiction over the child before his or her eighteenth birthday. *Id.* The juvenile court order must be valid and in effect at the time of filing the SIJ petition.¹ Accordingly, in this case the age of the petitioner at the time of the juvenile court proceedings is central to his eligibility for SIJ classification.

Pertinent Facts and Procedural History

In denying the petition, the director primarily relied on two documents: 1) a [REDACTED] Sheriff's Office Arrest and Booking Report of the petitioner stating his date of birth to be May 18,

¹ The current regulation at 8 C.F.R. § 204.11(c)(5) requires that the juvenile court order remain in effect throughout adjudication of the SIJ petition. However, the proposed rule amending the SIJ regulations provides age-out protection for petitioners whose dependency order is valid at the time of filing the SIJ petition, but later expires because the petitioner reaches the age of majority in the applicable state before the SIJ petition is adjudicated. *See* 76 Fed. Reg. 54978, 54980 (Sept. 6, 2011) (amending the eligibility requirement at revised 8 C.F.R. § 204.11(b)(1)(iv)).

1989; and 2) an authenticated copy of the Mexican birth record of the petitioner stating his date of birth to be May 18, 1992. The dates of birth on these documents conflict with the May 13, 1994 date of birth stated in the juvenile court order and listed on the two copies of the petitioner's birth record which he submitted below. If the petitioner was born in 1989 or 1992, he would have been over 18 on the date of the juvenile court dependency order, rendering the order invalid for lack of jurisdiction.

The director did not properly notify the petitioner of the derogatory evidence on which she relied to deny the petition and did not give the petitioner an opportunity to respond, as required by the regulation at 8 C.F.R. § 103.2(b)(16)(i). To correct that error, the AAO provided the petitioner, through counsel, with copies of the arrest report and birth record obtained by USCIS so that he could explain the discrepancies regarding his birthdate. In its February 5, 2013 notice, the AAO explained that the two documents indicated that the petitioner was over 18 at the time of the juvenile court dependency order. On March 1, 2011, the petitioner was arrested for fishing without a license. The arrest report states his last name as [REDACTED] and his date of birth to be May 18, 1989. If this date is correct, the petitioner was 22 years old when the juvenile court dependency order was issued. The AAO requested the petitioner to explain why the arrest report states his last name as [REDACTED] and his year of birth as 1989. In his response to the AAO notice, counsel provided no explanation for these discrepancies.

In August 2012, the USCIS Mexico City Field Office obtained an authenticated copy of the petitioner's birth record from the Central Civil Registry of the State of Chiapas, Mexico, which states his date of birth to be May 18, 1992, contrary to the May 13, 1994 date of birth listed on the copies of the birth record submitted by the petitioner below. If the petitioner was born in 1992, he would have been 19 years old at the time the juvenile court dependency order was issued. Other notable discrepancies exist between the three copies of the petitioner's birth record. The copy of the petitioner's birth record obtained by USCIS states the petitioner's name as [REDACTED] as stated on the copies submitted by the petitioner. The copy obtained by USCIS also identifies the petitioner's father as "[REDACTED] [REDACTED] who was 46 years old at the time of the petitioner's birth, but the copies submitted by the petitioner identify his father as [REDACTED] who was 63 years old at the time. The petitioner's mother is identified as "[REDACTED] age 30 on the copy obtained by USCIS, but her first name is spelled [REDACTED] and her age is stated as 41 on the copies submitted by the petitioner.²

In its February 5, 2013 notice, the AAO requested the petitioner to explain these discrepancies regarding his name, date of birth and the identity and ages of his parents. In response, counsel provided no explanation except to assert that the authenticated copy of the petitioner's birth record obtained by USCIS "is false." Counsel also submitted a copy of the petitioner's Mexico Consular Identification Card (*Matricula Consular*) issued on February 20, 2013 and stating the petitioner's

² In addition, the birth record obtained by USCIS and those submitted by the petitioner state different book, page and act numbers, as well as registration dates.

date of birth to be May 13, 1994. On motion, counsel resubmits a copy of the petitioner's *Matricula Consular* and a copy of his Mexican passport.

Invalid Juvenile Court Order

To be eligible for SIJ classification, an alien must have been the subject of a juvenile court dependency or custody order issued in accordance with state law and under the jurisdiction of the juvenile court. Section 101(a)(27)(J)(i) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(c)(3). In this case, the record contains conflicting evidence regarding the petitioner's date of birth. On appeal, counsel asserted that the petitioner's birth records submitted below and his consular identification card show that he was under 18 years old when the juvenile court order was issued. On motion, counsel repeats this assertion and presents a copy of the petitioner's new Mexican passport issued on June 26, 2013. Counsel does not state what documents were relied upon to issue the petitioner's consular identification card or passport. On appeal, counsel asserted that the birth certificate obtained by USCIS was false, but provided no other explanation for the discrepancies in the record regarding the petitioner's age and parentage.

On motion, counsel again fails to present any affidavits, statements or other evidence to explain the inconsistencies identified in the AAO's RFE and June 13, 2013 decision, incorporated here by reference. The record contains no explanation for why the petitioner's date of birth is stated as May 18, 1989 on his [REDACTED] arrest report. The record also lacks any evidence addressing the differences in the petitioner's date of birth and the names and ages of his parents as stated in the Mexican birth records obtained by the petitioner and that obtained by USCIS.³ These unresolved discrepancies detract from the credibility of counsel's claim as the record contains no indication that the birth record obtained by USCIS is fraudulent. On motion, counsel has again failed to establish by a preponderance of the evidence that the petitioner was under the age of 18 at the time the juvenile court order was issued. The juvenile court order was consequently invalid as the court did not have jurisdiction over the petitioner at the time the dependency order was issued and the petitioner has failed to meet the requirements of subsection 101(a)(27)(J)(i) of the Act.

Consent to SIJ Classification

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through USCIS, to "consent[] to the grant of special immigrant juvenile status." 8 U.S.C. § 1101(a)(27)(J)(iii). This consent determination "is an acknowledgement that the request for SIJ

³ For example, the record lacks any affidavit or statement by the petitioner or other individuals regarding: why the arrest report lists a different last name and date of birth for the petitioner; how the petitioner obtained the Mexican birth records listing his birth year as 1994; whether he knows the full names and ages of his parents; or any other discussion of the discrepancies identified by the AAO in its prior decision.

classification is bona fide,”⁴ meaning that neither the dependency order nor the best interest determination was “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.” H.R. Rep. No. 105-405 at 130 (1997).

In this case, the juvenile court dependency order briefly states that the petitioner was abandoned by his parents on or about October 2009 when they left the family home, that he is eligible for long-term foster care and that it is not in his best interests to return to Mexico because he was abandoned. The order contains no other specific factual findings supporting these determinations. On appeal counsel submitted additional documents which provided a reasonable factual basis for the juvenile court dependency order and established that the petitioner sought the order primarily to obtain relief from parental abandonment and access to social services through the Florida Department of Children and Families. However, because the petitioner has not established that the court had jurisdiction over him as a juvenile at the time the dependency order was issued, consent to the grant of SIJ classification is not warranted in this case under subsection 101(a)(27)(J)(iii) of the Act.

Conclusion

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. The appeal will remain dismissed and the petition will remain denied.

ORDER: The motion is granted. The June 13, 2013 decision of the Administrative Appeals Office is affirmed. The petition remains denied.

⁴ 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).