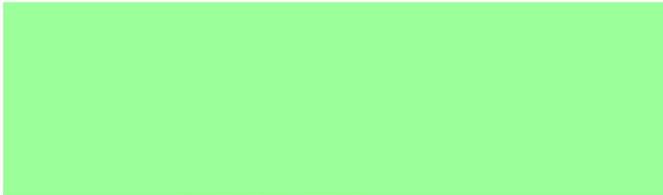


(b)(6)

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

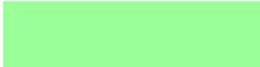


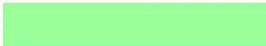
U.S. Citizenship
and Immigration
Services



AUG 27 2013

Date: Office: NEW YORK, NY

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)

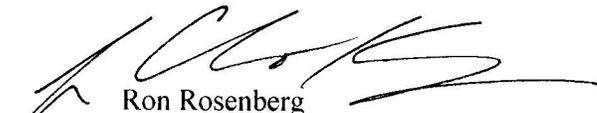
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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

DISCUSSION: The New York, New York 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 The decision of the director will be withdrawn and the petition will be remanded to the director for further action.

The petitioner is a 22-year-old citizen of Guinea 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 she found that the petitioner was 21 years old at the time of filing the Form I-360, Petition for Special Immigrant, and therefore did not meet the criteria for SIJ classification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director’s ground for denial. However, because the petition is not approvable based on the present record, the matter will be remanded to the director for further action and issuance of a new decision.

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).

Pertinent Facts

The record reflects that the petitioner was born in Guinea on July 20, 1991. The petitioner entered the United States on March 8, 2008 as a B-2 visitor when he was 16 years old.¹ On July 17, 2012, the Family Court of the State of New York (juvenile court) awarded guardianship of the petitioner to when the petitioner was 20 years old. The petitioner filed the instant Form I-360 on July 20, 2012, his 21st birthday. The director denied the petition and counsel timely appealed.

Analysis

The director correctly determined that the petitioner failed to meet the criteria to be classified under SIJ status because the evidence submitted below showed that he was already 21 years of age at the time of filing. The relevant evidence in the record below contains the petitioner's birth certificate without the specific time that he was born, an order appointing guardianship of the petitioner, and a juvenile court order making the requisite nonviability-of-reunification and best-interest determinations. The record shows that was issued a guardianship order under section 661 of the New York Family Court Act (FCA) and section 1707 of the New York Surrogate's Court Procedure Act (SCPA) which allows guardianship past the age of majority (18 years old) to individuals under the age of 21 years old who consent to the appointment of a guardian. N.Y. FAM. CT. ACT § 661 (McKinney 2012); N.Y. SURR. CT. PROC. ACT § 1707 ((McKinney 2012). In this case, the petitioner was 20 years old when was appointed his guardian and his consent to the appointment was noted in the guardianship order.

On appeal, counsel submits a second birth certificate for the petitioner indicating that the petitioner was born on July 20, 1991 at 11:00 P.M. Counsel asserts that although the Form I-360 was filed on the day that the petitioner turned 21 years old, it was filed prior to the exact time that the petitioner was born and therefore he was considered to still be "under the age of 21" for purposes of timely applying for SIJ classification. The petitioner's Form I-360 was date-stamped as received by United States Citizenship and Immigration Services (USCIS) on July 20, 2012 at 9:16 A.M. As this was approximately thirteen hours prior to the time that the petitioner was born, counsel is correct in stating that the petitioner had not yet lived for 21 years and was therefore "under the age of 21" when his Form I-360 was filed. Consequently, the director's decision shall be withdrawn.

¹ On November 2, 2009, the petitioner was served with a Notice to Appear for removal proceedings. He remains in proceedings before the New York Immigration Court.

The petition is not approvable, however, because the juvenile court order is deficient and the present record does not contain sufficient evidence to establish a reasonable factual basis for the juvenile court order and USCIS consent to the petitioner's request for SIJ classification. 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.² Court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS's consent. Orders lacking specific factual findings are insufficient to warrant the agency's consent and must be supplemented by other relevant evidence demonstrating the factual basis for the court's order.³

In this case, the juvenile court order states that the petitioner's reunification with his parents is not viable due to abandonment and that it is not in his best interest to return to Guinea. The order does not further state any relevant facts to support these findings and apart from the country conditions reports, the record does not contain additional evidence relevant to the court's findings. The record contains no evidence from the juvenile court proceedings such as, for example, the original application for guardianship, the transcript of any hearing held on the application or any other evidence the court considered regarding the petitioner's parents' abandonment. In sum, the present record lacks sufficient evidence to support the juvenile court's finding of abandonment and to warrant the agency's consent to the petitioner's request for SIJ classification as required by section 101(a)(27)(J)(iii) of the Act.

The director's August 25, 2012 decision denying the petitioner's request for SIJ classification was based solely on the determination that the petitioner failed to file the Form I-360 while less than 21 years of age. The sole ground for denial has now been overcome, but the petitioner remains ineligible for SIJ classification because the juvenile court order dated July 17, 2012 is deficient and fails to establish the petitioner's eligibility. Because the director did not address this deficiency in her decision, the matter must be remanded to the director for further action such as issuance of a Request for Evidence (RFE) to provide the petitioner with the opportunity to address the remaining deficiencies of record.

² 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).

³ *Id.* at 5. See also Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981, 54985 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11).

Conclusion

In this case, as in all visa petition 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Although the petitioner has overcome the director's ground for denial, he remains ineligible for SIJ classification on other grounds. Accordingly, the director's decision will be withdrawn and the matter will be remanded to the director for further action in accordance with the preceding discussion. The director shall then issue a new decision, which shall be certified to the AAO if adverse to the petitioner.

ORDER: The August 25, 2012 decision of the New York City Field Office is withdrawn. The petition is remanded to that office for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.