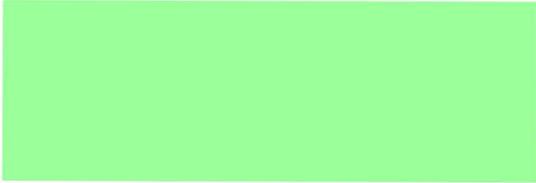




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date:

**AUG 30 2013**

Office: OMAHA, NE

FILE:



IN RE:

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:

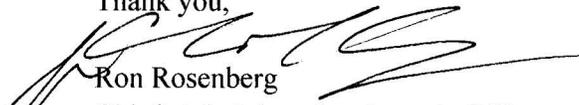


INSTRUCTIONS:

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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Omaha, Nebraska Field Office Director, (“the director”) denied the special immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director’s subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner is a 20-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), and as defined at section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J).

The Field Office Director (the director) denied the petition based on her belief that the petitioner’s request for SIJ status was not bonafide. The AAO withdrew the director’s decision and remanded the matter for further action. On remand, the petitioner, through counsel, submitted evidence that the director found insufficient to overcome the ground for denial. On certification of the director’s adverse decision, counsel submits additional evidence.

#### *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.<sup>1</sup> 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

---

<sup>1</sup> 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 Donald Neufeld, Acting Assoc. Dir., 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.

(b)(6)

(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[.]

When adjudicating a petition for special immigrant juvenile status, United States Citizenship and Immigration Services (USCIS) examines the juvenile court order only to determine if the order contains the requisite findings of dependency or custody; nonviability of family reunification due to parental abuse, neglect or abandonment; and the best-interest determination, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. USCIS then reviews the relevant evidence to ensure that the record contains a reasonable factual basis for the court's determinations, which demonstrate that the court order was sought primarily to obtain relief from abuse, neglect or abandonment. USCIS is not the fact finder in regards to 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, § U.S.C. § 1101(a)(27)(J)(i)-(ii) (referencing the determinations of a juvenile court or other administrative or judicial body).<sup>2</sup> Where the record lacks evidence providing a reasonable factual basis for the juvenile court order, USCIS may request additional evidence from the petitioner to establish a reasonable basis for the agency's consent to SIJ classification.<sup>3</sup>

#### *Pertinent Facts*

The record reflects that the petitioner was born in Mexico on December 21, 1992. He claims he entered the United States without inspection on January 1, 2010 when he was 17 years old. On September 7, 2011, the petitioner was apprehended by U.S. Immigration and Customs Enforcement (ICE) and subsequently placed into removal proceedings before the Omaha Immigration Court. On November 14, 2011, the Probate Division of the [REDACTED] Court (juvenile court) granted temporary guardianship of the petitioner to his sister-in-law when he was 18 years old. The petitioner filed the instant Form I-360 on November 21, 2011.

The Field Office Director (the director) denied the petition on February 3, 2012 based on her belief that the petitioner's request for SIJ status was not bonafide. In its May 14, 2012 decision on appeal, the AAO found the director's decision to be unfounded but remanded the Form I-360

<sup>2</sup> See also 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).

<sup>3</sup> *Id.* at 5.

to the director because the juvenile court order was deficient and the petitioner's request for SIJ classification was not approvable. Upon remand, the director issued a request for further evidence (RFE) of court documents and other evidence relating to the guardianship order. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish his eligibility. Accordingly, the director denied the petition on April 8, 2013 because the record did not provide a reasonable factual basis for the court order and did not warrant the agency's consent to the petitioner's request for SIJ classification. The director has certified her decision to the AAO for review.

On certification, counsel submits additional evidence to establish that the petitioner was abandoned by his mother and that the record contains sufficient evidence to establish a reasonable factual basis for the court order. The additional evidence fails to establish the petitioner's eligibility for SIJ classification and the director's April 8, 2013 decision denying the petition will be affirmed and the petition will remain denied for the following reasons.

### *Analysis*

In the AAO's prior decision on May 14, 2012, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, we will only address the evidence submitted after that decision was issued. In response to the RFE issued by the director upon remand, the petitioner resubmitted the juvenile court's Letters of Temporary Guardianship and order appointing temporary guardianship of the petitioner to his sister in law. He also submitted a copy of the Application for Appointment of Guardian of Minor Child and declarations from friends [REDACTED]

[REDACTED] In her certified decision, the director correctly reviewed the additional evidence and determined that the Application for Appointment of Guardian of Minor Child did not give any specific information regarding the abuse, neglect, or abandonment of the petitioner by his mother. Additionally, the declarations were brief and did not contain any probative information regarding the petitioner's specific circumstances in [REDACTED]

On certification, the petitioner submits a personal letter and declarations and letters from friends, [REDACTED]

[REDACTED] In his declaration, the petitioner briefly states that after his father died, his mother sank into a deep depression and abandoned him. He explains that others around the ranch where he was living gave him food and clothing but that he grew up alone until he came to the United States. While the petitioner is not required nor expected to recount the circumstances of his mother's neglect and abandonment, his letter is brief and does not provide probative, detailed information sufficient to support the court order. The declarations and letters from his friends all state that they have known the petitioner for years and that he was abandoned by his mother after the death of his father. However, none of the declarations give any specific information about how they are aware that the petitioner was abandoned or provide any other relevant details about the petitioner's circumstances in Mexico. For example, none of the petitioner's friends state that they lived on or near the ranch with the petitioner when he was child or otherwise explain how they know the petitioner, his mother or how and when his mother abandoned him.

(b)(6)

The relevant evidence in the record fails to establish that the petitioner is eligible for SIJ classification because the guardianship order is deficient under section 101(a)(27)(J)(i)-(ii) of the Act. The court order dated November 14, 2011 states that the petitioner's mother "is in Mexico and is not ready, willing, or able to care for the minor child, and as such, he has been abandoned, neglected, or abused by his biological mother, and therefore family reunification is not viable." The order does not state any facts upon which this determination was based. The order further states that it is not in the petitioner's best interest to be returned to Mexico, but does not state a reason for that determination. The present record still lacks sufficient evidence providing a reasonable factual basis for the court's determinations 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

### *Conclusion*

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the director's decision will be affirmed and the petition will remain denied for the above-stated reasons.

**ORDER:** The April 8, 2013 decision of the Omaha Field Office Director is affirmed. The petition remains denied.