

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **DEC 04 2013**

Office: DETROIT, MI

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)

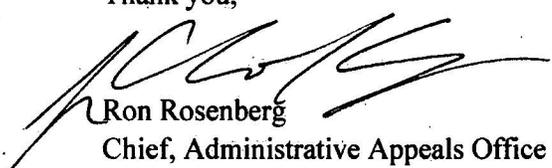
ON BEHALF OF PETITIONER:

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. 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 Detroit, Michigan 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 19-year-old citizen of Canada 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 he found that the petitioner sought a juvenile court order primarily for immigration purposes. On appeal, counsel submits a brief reasserting the petitioner’s eligibility.

Applicable Law

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles, defined in section 101(a)(27)(J) of the Act 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[.]

Pertinent Facts

The record reflects that the petitioner was born in Canada on July 22, 1994. She filed a petition nominating Sally Rowe as her guardian with the [redacted] State of Michigan, Probate Court (juvenile court). In February of 2012, the juvenile court appointed [redacted] as guardian

of the petitioner. The petitioner filed the instant Form I-360 on January 11, 2013. The director denied the petition and counsel timely appealed.

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 fails to establish the petitioner's eligibility. The brief submitted on appeal fails to establish the petitioner's eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

Analysis

The relevant evidence fails to establish that the petitioner was eligible for SIJ classification because the guardianship order is deficient under section 101(a)(27)(J)(i) of the Act. The court order dated February 22, 2012 does not specify the basis for the nonviability determination. The order states that "[r]eunification with one or both of [the petitioner's] parents is not viable due to abuse, neglect, or abandonment." The order does not state on which ground family reunification is not viable and contains no factual findings regarding the nonviability of parental reunification. The court order also briefly states that it is in the petitioner's best interest not to return to Canada but again does not contain any specific factual findings to support this determination.

When adjudicating an SIJ petition, U.S. Citizenship and Immigration Services (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.¹ 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.²

In this case, the petition for guardianship contains one sentence that states that a "temporary guardian is necessary because both biological parents have abandoned the minor." However, there is no description regarding the circumstances surrounding the petitioner's abandonment by her parents. Further, the record contains no other, relevant supporting evidence other than a Motion for Special Findings on the Issue of Special Immigrant Juvenile Status which specifically requested that the juvenile court issue an order "making the necessary factual findings to enable

¹ 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).

² *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).

[the petitioner] to petition [USCIS] for Special Immigrant Juvenile status pursuant to 8 U.S.C. § 1101(a)(27)(J).”

In the motion, counsel stated that the petitioner moved to the United States with her parents when she was approximately three years old. Counsel stated that the petitioner’s father then moved back to Canada and the petitioner remained in the United States with her mother until 2001. Counsel stated that in 2001, the petitioner returned to Canada to visit her father but that he refused to allow her to return to the United States. Counsel briefly described the petitioner’s living situation with her father as abusive and stated that she subsequently returned to live with her mother in the United States. Counsel added that the petitioner’s mother, who had remarried in 2009, lost their home to foreclosure in June of 2011. The petitioner’s mother instructed the petitioner to find “alternate living arrangements” and the petitioner then moved in with Sally Rowe. Counsel stated that the petitioner had minimal contact with her mother and no contact with her father since this time. The record lacks any evidence, such as a time and date stamp, that the motion was filed with and considered by the juvenile court.

On appeal, counsel argues that the court order contains the requisite findings for SIJ classification and was obtained solely for custody purposes. Contrary to counsel’s assertions, the order lacks a specific nonviability determination and instead repeats the language, almost verbatim, of section 101(a)(27)(J)(i)-(ii) of the Act. Moreover, counsel’s guardianship brief explicitly requested “an order making necessary factual findings” but the February 22, 2012 court order states that reunification with the petitioner’s parents is not viable due to “abuse, neglect or abandonment,” and does not state which of those grounds apply or provide any other specific factual findings upon which the order was based. The record contains no evidence that counsel’s Motion for Special Findings was filed with the juvenile court or that the court otherwise considered the facts asserted therein. Counsel submitted no other relevant evidence such as, for example, affidavits from the petitioner, her guardian, or other individuals with knowledge of the facts underlying the juvenile court order. The record lacks a reasonable factual basis for the court order. Accordingly, the relevant evidence and counsel’s claims on appeal fail to demonstrate that the request for SIJ classification was bona fide and merits the agency’s consent under section 101(a)(27)(J)(iii) of the Act.

Conclusion

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner was the subject of a qualifying juvenile court dependency or custody order. Consequently, the petitioner does not meet subsection 101(a)(27)(J)(iii) of the Act and the appeal will be dismissed.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not met her burden. The appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.