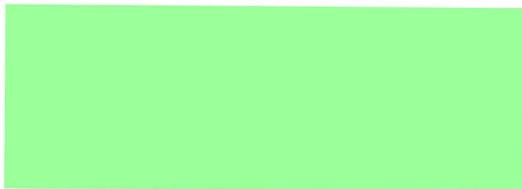




U.S. Citizenship
and Immigration
Services

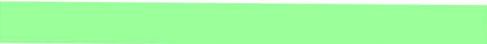
(b)(6)



Date: **FEB 14 2013**

Office: SAN FRANCISCO, CA

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:

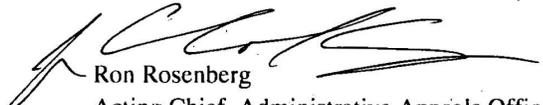


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The San Francisco, California 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 22-year-old citizen of El Salvador 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 for failure to demonstrate that a juvenile court dependency or custody order for the petitioner was in effect at the time of filing his Form I-360. 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 and Procedural History

The applicant was born in El Salvador on July 20, 1990. On June 3, 2008, the petitioner's aunt filed a petition for guardianship of the petitioner with the [REDACTED] California Superior Court. On July 7, 2008, the Court appointed the petitioner's aunt as temporary guardian of the petitioner which terminated on July 20, 2008 when the petitioner turned the age of majority under California law. The petitioner filed the instant Form I-360 on June 7, 2011 when he was 20 years old. The director subsequently issued a request for evidence (RFE) of the requisite juvenile court order declaring the petitioner a dependent upon the juvenile court and making the requisite non-viability and best-interest determinations. Counsel responded to the RFE with additional evidence which the director found insufficient to establish the petitioner's eligibility for SIJ classification. The director denied the petition and counsel timely appealed.

On appeal, counsel asserts that pursuant to the United States Citizenship and Immigration Services' (USCIS) policy memorandum dated April 4, 2011 and the settlement agreement in *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. 2005), the petitioner qualifies for SIJ status.

Analysis

The relevant evidence fails to establish that the petitioner was eligible for SIJ classification because the guardianship order had already been terminated at the time his Form I-360 was filed. The law requires that the petitioner be the subject of a juvenile court dependency or custody order in effect when the Form I-360 is filed. 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)(5). Under the California Family Code, a guardianship appointment will terminate "when the ward attains majority." Cal. Fam. Code § 1600 (West 2012). The age of majority in California is 18. Cal. Fam. Code § 6500 (West 2012). In this case, the petitioner turned 18 on July 20, 2008, nearly three years before he filed his Form I-360 on June 7, 2011. The court order, dated February 24, 2012, that was submitted in response to the RFE specifically states that the court's jurisdiction over the petitioner terminated on July 20, 2008. Accordingly, the petitioner's guardianship had terminated before his Form I-360 was filed and he was not the subject of a valid custody or dependency order in effect at the time of filing, as required by subsection 101(a)(27)(J)(i) of the Act.

On appeal, counsel cites a USCIS policy memorandum regarding age-out protections afforded to SIJ petitioners pursuant to the settlement agreement in *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. 2005). The settlement agreement prevents USCIS from denying or revoking the approval of certain SIJ petitions based on age or dependency status if the petitioner was less than 21 years of age and the subject of a valid juvenile court dependency order at the time the petition was filed. See *Perez-Olano v. Holder*, No. CV 05-3604, 7-8 (C.D. Cal. 2005) (Settlement Agreement). The settlement agreement prevents denial of an SIJ petition because the dependency order was later terminated due to the petitioner's age. *Id.* at 8. However, this age-out protection only applies to those petitioners who were the subject of a valid dependency order at the time they filed the Form I-360. *Id.* In this case, the petitioner's guardianship order had already terminated nearly three years before he filed his Form I-360 because he had turned 18, the age of majority in California.

Conclusion

The record fails to demonstrate that any juvenile court dependency or custody order was in effect at the time this petition was filed. Consequently, the petitioner does not meet subsections 101(a)(27)(J)(i) and (ii) of the Act and the appeal will be dismissed.

In these 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.