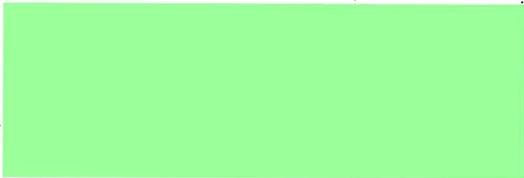


(b)(6)

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

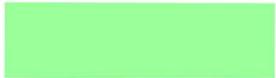


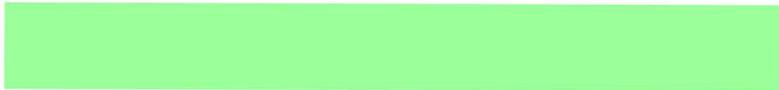
U.S. Citizenship
and Immigration
Services



Date: **FEB 15 2013**

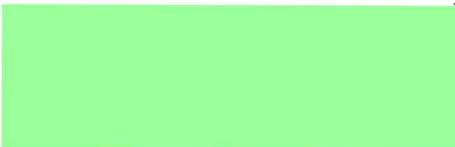
Office: OMAHA, NE

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:

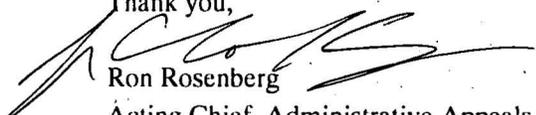


INSTRUCTIONS:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 Field Office Director, Omaha, Nebraska (the director), denied the special immigrant visa petition. 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 El Salvador who seeks classification as a special immigrant juvenile (SIJ) pursuant to sections 101(a)(27)(J) and 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The director denied the petition for lack of evidence of the requisite juvenile court dependency order issued in accordance with state law governing such declarations of dependency. On appeal the petitioner, through counsel, submits a brief and no 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. 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[.]

Pertinent Facts

The record reflects that the petitioner was born in El Salvador on May 1, 1993. On October 11 2011, the Iowa District Court for ██████████ County entered an order appointing a guardian for the petitioner. The order was amended on November 7, 2011 to include the determination that the petitioner was abandoned by his mother and father. The petitioner was already 18 years old at the time of the guardianship proceedings. The petitioner filed the instant Form I-360 on November 14, 2011. The director subsequently issued a request for evidence (RFE) and notice of intent to deny (NOID) the petition because at the time guardianship proceedings were initiated, the petitioner was not a minor under Iowa state law. The petitioner, through counsel, responded with a copy of the Iowa Statute 633.552, "Law Review and Journal Commentaries" regarding this statute, and a copy of the adopted decision *Matter of Perez-Quintanilla*, (AAO 2007). The petition was denied and counsel timely appealed.

On appeal, counsel submits a brief arguing that the petitioner has demonstrated by a preponderance of the evidence that he qualifies for SIJ classification because the state of Iowa allows for guardianships for those older than 18. Counsel's arguments fail to establish the petitioner's eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

Analysis

The director correctly determined that the petitioner failed to establish that he is eligible for SIJ classification which requires that he be declared a dependent upon a juvenile court located in the U.S. in accordance with state law. The record shows that the petitioner's aunt was issued a guardianship order under section 633.552 of the Iowa Code, which allows a state court to approve guardianship for minors or persons who are impaired or incapacitated. However, the petitioner was not a minor under Iowa law at the time the process was initiated. Section 232.2(5) of the Iowa Code states that a "child" is a person under 18 years of age. Iowa Code Ann. § 232.2(5) (West 2012). The record shows that the petitioner was 18 years old at the time his aunt initiated guardianship proceedings and therefore was not a minor under Iowa law. Consequently, the ██████████ County, Iowa District Court did not have jurisdiction over the petitioner as a minor at the time of his guardianship proceedings and the guardianship order does not meet the requirements of subsection 101(a)(27)(J)(i) of the Act.

On appeal, counsel argues that the guardianship order is valid for purposes of SIJ classification because the petitioner met the definition of a child under the Act regardless of the fact that he was not a minor under Iowa law. Counsel further argues that since Iowa District Courts can exercise jurisdiction over juveniles in other guardianship proceedings, the actual basis for the dependency determination in the petitioner's case does not matter and the petitioner is eligible for SIJ classification. Counsel is mistaken. The plain language of the statute and the regulation require that the court order be issued pursuant to the court's jurisdiction over the petitioner as a juvenile under state law. The term "juvenile court," as used in subsection 101(a)(27)(J)(i) of the Act is defined as a court "having jurisdiction under state law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). A dependency or custody order issued by a court with jurisdiction over both adults and juveniles will only suffice if the record

shows that the court exercised jurisdiction over the petitioner as a juvenile. See 8 C.F.R. § 204.11(c)(3) (requiring the court order to be in compliance with state law governing juvenile court dependency). In this case, the record lacks any evidence that the guardianship order was issued pursuant to the court's jurisdiction over the petitioner as a juvenile. To the contrary, the record shows that the petitioner was already 18 years old at the time the guardianship proceedings had been initiated and was no longer a minor under Iowa law. The court orders issued on October 10 and November 7, 2011 do not address the basis of the court's jurisdiction over the petitioner nor is there any mention of the petitioner's age. Accordingly, the guardianship order does not meet the requirements of subsection 101(a)(27)(J)(i) of the Act and the regulation at 8 C.F.R. § 204.11(c)(3).

Counsel also erroneously relies on *Matter of Perez Quintanilla* as evidence that the petitioner qualifies for SIJ status even though he was not a minor under Iowa law at the time of the guardianship proceedings. As correctly noted by the director, the applicant in *Perez Quintanilla* had a juvenile court order that had been initiated prior to his eighteenth birthday, but who turned 18 while waiting for a decision on his Form I-360. See *Matter of Perez-Quintanilla*, (AAO 2007) at p. 9. In this case, the petitioner had already reached the age of majority in Iowa at the time of his guardianship proceedings and *Matter of Perez-Quintanilla* is inapplicable.

Conclusion

The relevant evidence submitted below and the brief submitted on appeal fail 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)(i) 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.