



U.S. Citizenship
and Immigration
Services

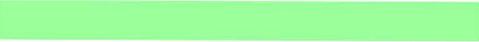
(b)(6)



Date: JUN 03 2013

Office: NEWARK, NJ

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)

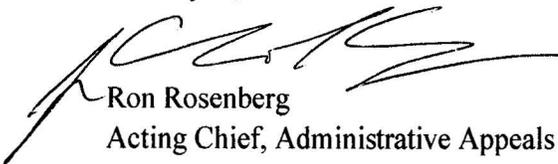
ON BEHALF OF PETITIONER:



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.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Newark, New Jersey 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 sustained.

The petitioner is a 16-year-old citizen of Honduras 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 sought the 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 Honduras on April 20, 1996. The petitioner entered the United States on August 29, 2010 and was apprehended at the border by Border Patrol Agents. On March 14, 2011, the petitioner's mother filed a petition for guardianship of the petitioner with the Union County, Superior Court of New Jersey, Chancery Division-Family

Part (juvenile court). On May 16, 2011, the juvenile court awarded custody of the petitioner to her mother. The petitioner filed the instant Form I-360 on June 13, 2011. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief and additional evidence asserting that the petitioner was abandoned and abused by her father and did not seek the guardianship order primarily for an immigration benefit. Review of the entire record, including the brief submitted on appeal, demonstrates that the petitioner is eligible for and merits SIJ classification.

Analysis

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to consent to the grant of SIJ status. This consent determination is an acknowledgement that the request for SIJ classification is bona fide, which means that the juvenile court order and the best-interest determination were sought primarily to gain relief from parental abuse, neglect, abandonment or a similar basis under state law, and not primarily to obtain immigrant status.¹ 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

In this case, the director erroneously determined that the petitioner's request for SIJ classification was not bona fide. While the director stated in her decision that "the Service is not questioning the Court's finding of [a]buse, neglect or abandonment," she nonetheless disputed the juvenile court's determination. The director also relied on an interview of the petitioner conducted by a Border Patrol Agent when the petitioner was apprehended at the border. The director stated that the petitioner indicated at that interview that she was traveling to the United States to be reunited with her mother, did not express a fear of returning to Honduras, and was not a trafficking victim being brought into the U.S. under threat of harm. The director concluded that the juvenile court dependency order was not sought, therefore, to alleviate the petitioner's father's abandonment and abuse, but instead was sought primarily to secure immigrant status in the United States. The record contains no basis for the director to have looked behind the court order to conclude that

¹ H.R. Rep. No. 105-405 at 130 (1997). *See also* Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs., et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, p. 3 (Mar. 24, 2009).

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).

the SIJ request was not bona fide. A review of the administrative record shows that the interview conducted by the Border Patrol Agent was brief and consisted of questions asked to determine whether the petitioner had a credible fear of returning to Honduras and/or was trafficked into the United States. The questions asked and answered were not designed to determine eligibility for SIJ classification and the director erroneously relied on the Border Patrol interview to question the bonafides of the petitioner's SIJ request.

The juvenile court order in this case contains the requisite determinations: that the petitioner was adjudged, under the applicable state law, abused and abandoned by her father; that reunification with her father was not viable due to such abuse and abandonment, that it was not in the petitioner's best interest to return to Honduras; and that custody was awarded to her mother. The record also provides a reasonable factual basis for the juvenile court order. The record contains the evidence submitted with the petitioner's mother's dependency petition which included an affidavit from the petitioner's mother and a self-affidavit by the petitioner, both attesting to the petitioner's father's abuse and abandonment. The petitioner's mother credibly described her abusive relationship with the petitioner's father who threatened that if she ever left him, he would rape their younger daughter, the petitioner, because she looked like her mother. The petitioner's mother recounted how she eventually fled to the United States to escape his abuse, but how her husband followed her to this country and continued his abuse, including threats to kill her and take her children away. The petitioner's mother recounted how she returned to Honduras when she discovered that her husband had been taking her daughters away from her parents' care for weeks at a time and physically abusing them and neglecting them. In her self-affidavit, the petitioner recalled that when she lived with her father, he beat her with a belt and neglected her and sister such that they often had lice and no food to eat. The petitioner also submitted a psychological evaluation from [REDACTED] who reiterated the petitioner's account of her father's abuse and abandonment and further noted the significant difficulty and fear the petitioner expressed when discussing her father's abuse. [REDACTED] also conveyed that when asked why she did not disclose more information to the Border Patrol agent, the petitioner responded that she was terrified of the man who apprehended her.

Here, the petitioner has shown by a preponderance of the evidence that her request for SIJ classification is bona fide because she sought the juvenile court order primarily to obtain relief from her father's abuse and abandonment. The juvenile court order contains all the requisite determinations and the record provides a reasonable factual basis for the court's order. Accordingly, the petitioner is eligible for and merits special immigrant juvenile classification. The director's decision to the contrary shall be withdrawn.

Conclusion

In these 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has met her burden. The juvenile court order in this case satisfies the requirements of subsections 101(a)(27)(J)(i)-(ii) of the Act. The preponderance of the evidence shows that the petitioner's request for SIJ classification is bona fide and merits the agency's consent under subsection 101(a)(27)(J)(iii) of the Act. The appeal

will be sustained. The April 27, 2012 decision of the director will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.