



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUN 13 2013**

OFFICE: JACKSONVILLE, FL

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 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 Jacksonville, Florida Field Office Director (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 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). On February 23, 2012, the [REDACTED], Florida issued a juvenile dependency order stating the petitioner's date of birth as May 13, 1994. The petitioner filed the instant Form I-360, Petition for Special Immigrant, on March 30, 2012. The director denied the petition because the record contained conflicting evidence of the petitioner's date of birth, which indicated that he was not a juvenile at the time the dependency order was issued. On appeal, counsel submits a brief and 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 [.]

To be classified as an SIJ, an alien must be a child on the date the Form I-360 SIJ petition is filed. 8 C.F.R. § 204.11(c)(1) - (2). A child is defined as an unmarried person under the age of 21. Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). As long as an SIJ petition is filed before the child turns 21, the petitioner will not “age out” and the petition may not later be denied on the basis of the petitioner’s age. Section 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457 (Dec. 23, 2008). However, individual state laws may define a child as a person less than 21 years of age for purposes of state juvenile court proceedings and jurisdiction. In this case, Florida defines a child as an individual under the age of 18. Fl. Stat. Ann. § 39.01(12) (West 2012). Florida courts generally retain jurisdiction over a juvenile “until the child reaches 18 years of age.” Fl. Stat. Ann. § 39.013(2) (West 2012). Florida courts may retain limited jurisdiction over an SIJ petitioner whose immigration case remains pending until the child turns 22, but only if the court initially obtained jurisdiction over the child before his or her eighteenth birthday. *Id.* The juvenile court order must be valid and in effect at the time of filing and throughout the adjudication of the SIJ petition unless the order later expires only because the petitioner reaches the age of majority in the applicable state.¹ Accordingly, the age of the petitioner at the time of the juvenile court proceedings is central to his eligibility for SIJ classification.

Pertinent Facts and Procedural History

In denying the petition, the director primarily relied on two documents: 1) a Jacksonville, Florida [redacted] of the petitioner stating his date of birth to be May 18, 1989; and 2) an authenticated copy of the Mexican birth certificate of the petitioner stating his date of birth to be May 18, 1992. The dates of birth on these documents conflict with the May 13, 1994 date of birth stated in the juvenile court order and listed on the two copies of the petitioner’s birth certificate which he submitted below. If the petitioner was born in 1989 or 1992, he would have been over 18 on the date of the juvenile court dependency order, rendering the order invalid for lack of jurisdiction.

The director did not properly notify the petitioner of the derogatory evidence on which she relied to deny the petition and did not give the petitioner an opportunity to respond, as required by the regulation at 8 C.F.R. § 103.2(b)(16)(i). To correct that error, the AAO provided the petitioner,

¹ The current regulation at 8 C.F.R. § 204.11(c)(5) requires that the juvenile court order remain in effect throughout adjudication of the SIJ petition. However, the proposed rule amending the SIJ regulations provides age-out protection for petitioners whose dependency order is valid at the time of filing the SIJ petition, but later expires because the petitioner reaches the age of majority in the applicable state before the SIJ petition is adjudicated. *See* 76 Fed. Reg. 54978, 54980 (Sept. 6, 2011) (amending the eligibility requirement at revised 8 C.F.R. § 204.11(b)(1)(iv)).

through counsel, with copies of the arrest report and birth certificate so that he could explain the discrepancies regarding his birthdate. In its February 5, 2013 notice, the AAO explained that the two documents indicated that the petitioner was over 18 at the time of the juvenile court dependency order. On March 1, 2011, the petitioner was arrested for fishing without a license. The arrest report states his last name as '[REDACTED]' and his date of birth to be May 18, 1989. If this date is correct, the petitioner was 22 years old when the juvenile court dependency order was issued. The AAO requested the petitioner to explain why the arrest report states his last name as [REDACTED] and his year of birth as 1989. In his response to the AAO notice, counsel provided no explanation for these discrepancies.

In August 2012, U.S. Citizenship and Immigration Services (USCIS) Mexico City Field Office obtained an authenticated copy of the petitioner's birth certificate from the [REDACTED] Mexico, which states his date of birth to be May 18, 1992, contrary to the May 13, 1994 date of birth listed on the copies of the birth certificate submitted by the petitioner below. If the petitioner was born in 1992, he would have been 19 years old at the time the juvenile court dependency order was issued. Other notable discrepancies exist between the three copies of the petitioner's birth certificate. The copy of the petitioner's birth certificate obtained by USCIS states the petitioner's name as "[REDACTED]" instead of "[REDACTED]" as stated on the copies submitted by the petitioner. The copy obtained by USCIS also identifies the petitioner's father as "[REDACTED]" who was 46 years old at the time of the petitioner's birth, but the copies submitted by the petitioner identify his father as "[REDACTED]" who was 63 years old at the time. The petitioner's mother is identified as "[REDACTED]" age 30 on the copy obtained by USCIS, but her first name is spelled "[REDACTED]" and her age is stated as 41 on the copies submitted by the petitioner.

In its February 5, 2013 notice, the AAO requested the petitioner to explain these discrepancies regarding his name, date of birth and the identity and ages of his parents. In response, counsel provided no explanation for the discrepancies except to assert that the authenticated copy of the petitioner's birth certificate obtained by USCIS "is false." Counsel also submitted a copy of the petitioner's Mexico Consular Identification Card (*Matricula Consular*) issued on February 20, 2013 and stating the petitioner's date of birth to be May 13, 1994.

Invalid Juvenile Court Order

To be eligible for SIJ classification, an alien must have been the subject of a juvenile court dependency or custody order issued in accordance with state law and under the jurisdiction of the juvenile court. 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)(3). In this case, the record contains conflicting evidence regarding the petitioner's date of birth. On appeal, counsel asserts that the petitioner's birth records submitted below and his consular identification card show that he was under 18 years old when the juvenile court order was issued. Counsel does not state what documents were relied upon to issue the petitioner's consular identification card or why the card should outweigh the birth record obtained by USCIS. Instead, counsel claims that the birth certificate obtained by USCIS is false and he provides no other

explanation for the numerous discrepancies in the record regarding the petitioner's age and parentage. These unresolved discrepancies detract from the credibility of counsel's claim as the record contains no indication that the birth certificate obtained by USCIS is fraudulent. On appeal, counsel has failed to establish by a preponderance of the evidence that the petitioner was under the age of 18 at the time the juvenile court order was issued. The juvenile court order was consequently invalid as the court did not have jurisdiction over the petitioner at the time the dependency order was issued and the petitioner has failed to meet the requirements of subsection 101(a)(27)(J)(i) of the Act.

Consent to SIJ Classification

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through USCIS, to "consent[] to the grant of special immigrant juvenile status." 8 U.S.C. § 1101(a)(27)(J)(iii). This consent determination "is an acknowledgement that the request for SIJ classification is bona fide,"² meaning that neither the dependency order nor the best interest determination was "sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment." H.R. Rep. No. 105-405 at 130 (1997).

In making a consent determination, USCIS examines the juvenile court order to determine if the record contains a reasonable factual basis for the court's order and that the order contains the requisite findings of dependency or custody; non-viability of reunification due to abuse, neglect or abandonment; and that return to the native country of the child or his or her parents is not in the petitioner's best interest pursuant to subsections 101(a)(27)(J)(i)-(ii) of the Act. In this case, the juvenile court dependency order briefly states that the petitioner was abandoned by his parents on or about October 2009 when they left the family home, that he is eligible for long-term foster care and that it is not in his best interests to return to Mexico because he was abandoned. The order contains no other specific factual findings supporting these determinations.

In its February 5, 2013 notice, the AAO requested the petitioner to submit additional evidence to support USCIS' consent to the grant of SIJ classification. In response, counsel submitted a copy of the Petition for Dependency, the Case Plan for Permanent Guardianship, and a Judicial Review Social Study/Case Plan Update. These documents indicate that the petitioner was abandoned in Mexico by his parents, who left him without shelter, care or financial support since 2009. The petitioner subsequently entered the United States in search of his estranged brother, but was unable to locate him and began residing with a pastor, his guardian, in April 2011. The Florida Department of Children and Families (DCF) unsuccessfully attempted to contact the petitioner's parents at their last known residence and DCF informed the court that the whereabouts of the petitioner's parents were unknown. The petitioner only attended school in Mexico to the second

² 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).

grade and has had no formal education since that time. The documents submitted on appeal provide a reasonable factual basis for the juvenile court dependency order and establish that the petitioner sought the order primarily to obtain relief from parental abandonment and access to social services through DCF. However, because the petitioner has not established that the court had jurisdiction over him as a juvenile at the time the dependency order was issued, consent to the grant of SIJ classification is not warranted in this case under subsection 101(a)(27)(J)(iii) of the Act.

Conclusion

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. The preponderance of the evidence shows that the petitioner was not the subject of a valid juvenile court dependency order, as required by subsection 101(a)(27)(J)(i) of the Act. Consequently, the agency's consent to SIJ classification under subsection 101(a)(27)(J)(iii) of the Act is not warranted. The appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.