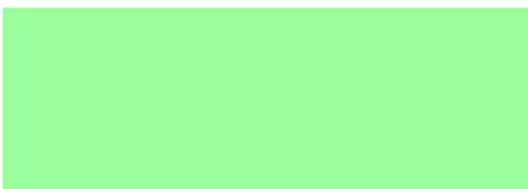


(b)(6)

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



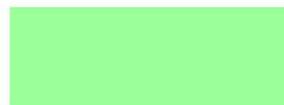
U.S. Citizenship  
and Immigration  
Services



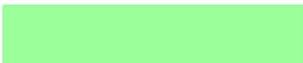
Date: **MAY 31 2013**

Office: NEWARK, NJ

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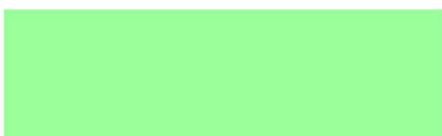


IN RE: Self-Petitioner:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 dismissed.

The petitioner is a 19-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 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 El Salvador on May 22, 1993. The petitioner entered the United States on November 11, 2008 and was apprehended at the border by Border Patrol Agents. On October 25, 2010, the petitioner's uncle filed a petition for guardianship of the petitioner with the [REDACTED]

On June 16, 2011, the juvenile court awarded custody of the petitioner to his uncle when the petitioner was 18 years old. The petitioner filed the instant Form I-360 on November 10, 2011. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief statement on the Form I-290B Notice of Appeal asserting that the petitioner was abandoned by his parents and did not seek the guardianship order primarily for an immigration benefit. Counsel's arguments fail to establish the petitioner's eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

*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.<sup>1</sup> 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.<sup>2</sup>

The director correctly determined that the petitioner failed to establish that his primary purpose in seeking the juvenile court order was to gain relief from abuse, abandonment, or neglect. The record contains the juvenile court order and a Brief in Support of the Petition for Guardianship (guardianship brief). In her guardianship brief, counsel specifically requested that the juvenile court issue an order containing the requisite determinations as stated at 8 C.F.R. § 204.11 so that the petitioner could apply for SIJ classification. She further asserted that the petitioner was eligible for long term foster care even though the Trafficking Victims Protection Reauthorization Act of 2008 (TVPPRA) removed the need for the juvenile court to deem a juvenile eligible for long term foster care.

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

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<sup>1</sup> 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).

<sup>2</sup> *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).

order lacks the requisite nonviability determination and instead contains pre-TVPPRA language regarding the petitioner's eligibility for long-term foster care. Moreover, counsel's guardianship brief explicitly "requested that [the] Court issue the attached order making the requisite findings enabling [the petitioner] to apply for Special Immigrant Juvenile status and remain with [his uncle]." Counsel's guardianship brief discusses the petitioner's parental abandonment in two short paragraphs, which lack probative statements of fact regarding the petitioner's individual circumstances. The June 16, 2011 court order is a signed copy of counsel's proposed order that was attached to her guardianship brief. The court order states that the petitioner is dependent on the court due to "abuse, neglect or abandonment by his parents," but does not state any specific factual findings upon which the order was based. The record lacks a reasonable factual basis for the court order and shows that the court order was not sought primarily to obtain relief from parental abuse, neglect, abandonment or a similar basis under state law, but was sought primarily to obtain SIJ status. 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.

Beyond the director's decision, 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.<sup>3</sup> The record shows that the petitioner's uncle was issued a guardianship order when the petitioner was already 18 years old. Section 9:17B-3 of the New Jersey statutes states that "every person 18 or more years of age shall in all other matters and for all other purposes be deemed to be an adult." N.J. Stat. Ann. § 9:17B-3 (West 2013). The petitioner was not a minor under New Jersey law and consequently the [redacted] did not have jurisdiction over the petitioner as a minor at the time of his guardianship proceedings. In the guardianship brief submitted below, counsel asserted that while the age of majority in New Jersey is 18, "the law recognizes exceptions for dependent and neglected children between the ages of 18 and 21." However, the guardianship order does not cite to any exception supporting its jurisdiction, does not address the basis of the court's jurisdiction over the petitioner and does not state the petitioner's age. Accordingly, the guardianship order does not meet the requirements of subsection 101(a)(27)(J)(i) of the Act as implemented by the regulation at 8 C.F.R. § 204.11(c)(3).

### *Conclusion*

The petitioner has not shown by a preponderance of the evidence that his request for SIJ classification is bona fide and merits the agency's consent. The petitioner has further failed to establish that he was the subject of a qualifying juvenile court dependency or custody order. Consequently, the petitioner does not meet subsection 101(a)(27)(J)(i) and (iii) of the Act and the appeal will be dismissed.

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<sup>3</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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.