

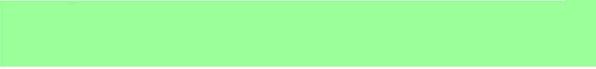


U.S. Citizenship
and Immigration
Services



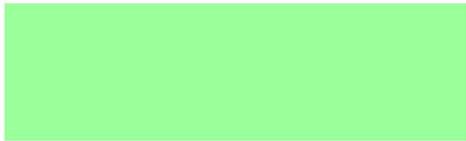
Date: **MAY 31 2013** Office: NEWARK, NJ

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:

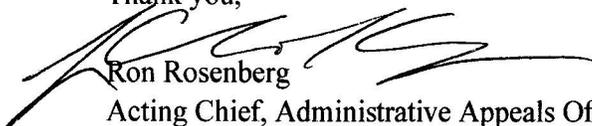


INSTRUCTIONS:

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.

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, Newark, New Jersey (the director), denied the special immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner is a 15-year-old citizen of Honduras 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 determined that the petitioner's request for SIJ classification was not bona fide because the record indicated that the petitioner sought the juvenile court order primarily for the purpose of obtaining lawful permanent residency in the United States, rather than gaining relief from parental abuse, neglect, abandonment, or a similar basis under state law. The AAO concurred with the director's decision and dismissed the petitioner's appeal. The petitioner timely filed a motion to reopen with additional evidence. On motion, counsel reasserts the petitioner's eligibility

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.¹ 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

¹ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). See section 235(d) of the TVPRA; see also Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs. (USCIS), et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009) (hereinafter *TVPRA – SIJ Provisions Memo*). The SIJ provisions of the TVPRA are applicable to this appeal. See section 235(h) of the TVPRA.

(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[.]

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through a U.S. Citizenship and Immigration Services (USCIS) Field Office Director, to consent to the grant of special immigrant juvenile status. This consent determination “is an acknowledgement that the request for SIJ classification is bona fide,”² meaning that neither the juvenile court 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.” H.R. Rep. No. 105-405 at 130 (1997); *see also* Memo. from William R. Yates, Assoc. Dir. for Operations, U.S. Citizenship and Immig. Servs., to Reg. Dirs. & Dist. Dirs., *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions* (May 27, 2004) at 2 (hereinafter *SIJ Memo #3*) (“An approval of an SIJ petition itself shall be evidence of the Secretary’s consent.”).

Pertinent Facts

The record reflects that the petitioner was born in Honduras on December 29, 1997. No father is identified on the applicant’s birth certificate. On June 29, 2008, the petitioner was apprehended at the Mexican border when he attempted to enter the United States using border crossing cards issued to another individual. On August 12, 2008, the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR) released the petitioner into the custody of his mother’s boyfriend in New Jersey.

On September 21, 2009, [REDACTED] granted custody of the petitioner to his mother and his mother’s boyfriend. The court order also stated that the petitioner was “determined to be abandoned by his father [J-B-] and reunification with his father is not viable It is not in [the petitioner’s] best interest to be returned to his country of nationality and country of last habitual residence, Honduras”

The petitioner filed this Form I-360 on November 10, 2009. The director subsequently issued a combined request for evidence (RFE) and notice of intent to deny (NOID) the petition because the juvenile court order appeared to have been sought primarily for immigration benefits and not for relief from parental abuse, neglect or abandonment. The petitioner, through counsel,

² *TVPRA – SIJ Provisions Memo, supra n.1* at 3.

responded with additional evidence which the director found insufficient to establish that the request for SIJ classification was bona fide and merited the agency's consent. The petition was denied and the AAO dismissed counsel's appeal.

On motion, counsel reasserts the petitioner's eligibility and claims that the additional evidence submitted shows that the petitioner's reasons for coming to the United States and seek the juvenile court order was to obtain relief from his father's abandonment. Counsel's assertions are supported by an affidavit from [REDACTED] who represented his mother and her partner in the petitioner's custody proceedings and letters from his mother [REDACTED] his uncle [REDACTED], his maternal grandfather [REDACTED], and his maternal aunt [REDACTED]. These letters were not previously submitted and counsel's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Upon reopening, a full review of the record as supplemented fails to establish the petitioner's eligibility and the appeal will remain dismissed for the following reasons.

Analysis

In its prior decision, the AAO determined that the petitioner failed to establish that his request for SIJ classification was bona fide and that he sought the juvenile court order primarily to obtain relief from abandonment, rather than to gain lawful permanent residency.³ The AAO found that although the petitioner submitted a juvenile court order containing the requisite determinations, it did not contain any factual findings upon which those determinations were made. For instance, the order names the petitioner's father, but this individual is not identified on the petitioner's birth certificate. The letters from the petitioner's mother and partner likewise failed to identify the petitioner's father or provide any further information regarding the petitioner's abandonment. Without such factual findings supporting the court's order and without any evidence that the individual named in the court order is the petitioner's father, the record was deemed insufficient for USCIS to consent to the petitioner's request for SIJ classification.⁴

On motion, counsel submits a brief statement on the Form I-290B, Notice of Motion stating that the new evidence submitted on motion is sufficient to show that the juvenile court order was sought in good faith and to provide relief from abandonment that the petitioner suffered from his biological father. The new evidence consists of the affidavit from the attorney who represented the petitioner's mother and partner during the petitioner's custody hearing and letters from the petitioner's family members. In her affidavit, [REDACTED] explains the case acceptance policy for the General Representation Unit (GRU) of the Legal Services of New Jersey (Legal Services), the organization that represents the petitioner in the instant Form I-360 submission. She states that the GRU does not accept all referrals from the Immigrant Representation Project of Legal

³ The petitioner bears the burden of proof to establish that his request for SIJ classification is bona fide and that he sought the juvenile court order primarily to obtain relief from his parents' abuse, neglect, or abandonment, rather than to gain lawful permanent residency. H.R. Rep. No. 105-405 at 130 (1997); see also *TVPR* – *SIJ Provisions Memo* at 3; *SIJ Memo #3* at 2.

⁴ See *SIJ Memo #3* at 5 (“Orders lacking specific factual findings generally are not sufficient to provide a basis for consent, and must be supplemented by separate findings or any other relevant evidence establishing the factual basis for the order.”).

Services and screens all potential cases for merit. She further states that the GRU agreed to represent the petitioner's case because his mother and her partner, A-R-⁵, expressed their desire for A-R- to have the legal rights and responsibilities of a parent towards the petitioner since his biological father abandoned him before his birth. [REDACTED] does not give further relevant information regarding the petitioner's abandonment. In her letter, [REDACTED] identifies the petitioner's biological father by name and gives additional details surrounding the petitioner's abandonment but essentially restates the same information that she provided in the letter submitted below. The letters from [REDACTED] all identify the petitioner's biological father by name and attest to the basic circumstances surrounding the petitioner's abandonment. While the evidence submitted on motion is sufficient to identify the petitioner's biological father, it does little to support the factual findings regarding abandonment and the petitioner's best interest upon which the juvenile court order was based.

Conclusion

Although the petitioner obtained the juvenile court order and determinations required by subsections 101(a)(27)(J)(i) and (ii) of the Act, the order does not contain any factual findings upon which it was based and the record still lacks sufficient evidence providing a reasonable factual basis for the order. Consequently, consent to a grant of SIJ classification in this case is not warranted under subsection 101(a)(27)(J)(iii) of the Act.

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. Upon reopening, the prior decision of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

ORDER: The motion is granted. The appeal is dismissed and the petition remains denied.

⁵ Name withheld to protect the individual's identity.