



U.S. Citizenship
and Immigration
Services

(b)(6)

Date:

NOV 12 2013

Office: PHILADELPHIA, PA

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, Pennsylvania, (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 an 18-year-old citizen of India 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 because she found that the juvenile court order did not contain the requisite findings of dependency or custody and nonviability of parental reunification due to abuse, neglect or abandonment. 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 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 petitioner was born in India on January 20, 1995. On March 13, 2012, the petitioner was apprehended at the Mexican border when he attempted to enter the United States. On April 27,

2012, the [REDACTED] with the approval of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), released the petitioner into the custody of [REDACTED] the petitioner's uncle, in [REDACTED] Pennsylvania. On August 21, 2012, the [REDACTED] Pennsylvania Court of Common Pleas (juvenile court) temporarily placed the petitioner under the custody of Mr. [REDACTED]. The petitioner filed this Form I-360, Petition for Special Immigrant, on November 19, 2012. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief asserting that the petitioner was abandoned by his parents and that the temporary custody order (juvenile court order) contains the requisite determinations. Counsel also argues that USCIS's requirement that juvenile court orders contain these findings violates the Tenth Amendment of the United States Constitution. Counsel's arguments fail to establish the petitioner's eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The brief submitted on appeal does not overcome the director's ground for denial. The appeal will remain dismissed for the following reasons.

Analysis

The relevant evidence fails to establish that the petitioner is eligible for SIJ classification because the guardianship order is deficient under section 101(a)(27)(J)(i) of the Act. The court order dated August 21, 2012 briefly describes the circumstances surrounding the petitioner's entry into the United States and his residence with his uncle in [REDACTED] Pennsylvania. It does not, however, address whether or not it would be in the petitioner's best interest to return to India. Specifically, the order states that the petitioner currently lives with "an uncle in [REDACTED] and that arrangement appears to be in his best interest." Counsel argues that temporary custody orders in Pennsylvania are "necessarily predicated on a finding that the arrangement is in the child's best interest." Additionally, counsel asserts that by finding that the petitioner should remain with his uncle in Pennsylvania, the juvenile court is necessarily finding that it is not in the petitioner's best interest to reunite with his parents in his home country. Counsel is incorrect. The juvenile court awarded temporary custody to [REDACTED] but did not make a determination about whether or not it is in the petitioner's best interest to be returned to his country of nationality or country of last habitual residence pursuant to section 101(a)(27)(J)(i) of the Act. The record contains affidavits from the petitioner's parents relinquishing custody of the petitioner to [REDACTED] but nothing in the record shows that the juvenile court or any other judicial or administrative entity determined that it would not be in the petitioner's best interest to return to India.

Further, the juvenile court order states that "based on the actions of the Defendants [parents], they abused, neglected, and abandoned" the petitioner. The order does not, however, make a determination that the petitioner's reunification with them is not viable for any of those reasons. On appeal, counsel argues that although not explicit, by finding that the petitioner's parents abused, abandoned, and neglected him, the juvenile court found that reunification is not viable.

However, the juvenile court order does not contain the requisite nonviability of reunification determination and the record does not show that the court determined that petitioner's circumstances have not been ameliorated to the extent that reunification with his parents is possible.

Additionally, counsel incorrectly claims that requiring the juvenile court order to contain the requisite findings for SIJ classification violates the Tenth Amendment of the United States Constitution because this compels "state courts rendering family law decisions to employ language dictated by federal statute." Section 101(a)(27)(J)(i) of the Act prescribes the eligibility requirements for SIJ classification and does not infringe upon states' rights to implement state family law. The Act does not compel state juvenile courts to make any determinations beyond their purview. The Act also does not interfere with state court rulings on child custody. However, to obtain the immigration benefit of SIJ classification, a child must be subject to a juvenile court order which contains the non-viability and best interest determinations required by section 101(a)(27)(J)(i) of the Act. Here, the relevant evidence fails to demonstrate that the petitioner was the subject of a qualifying juvenile court dependency or custody order. Consequently, the petitioner does not meet the requirements of subsection 101(a)(27)(J)(i) of the Act and is ineligible for SIJ classification.

Conclusion

In this case, as in all visa petition 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not met his burden. The appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.