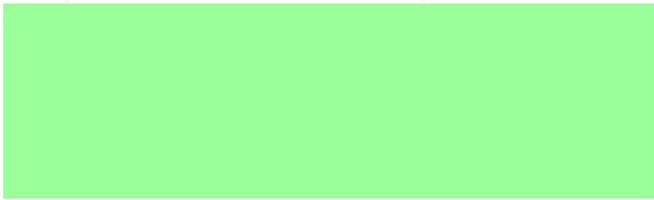


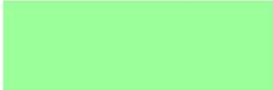
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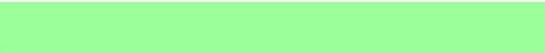
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

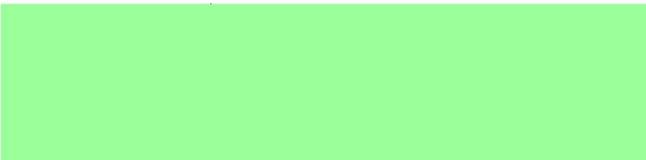


Date: **NOV 14 2013** Office: CLEVELAND, OH FILE: 

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)

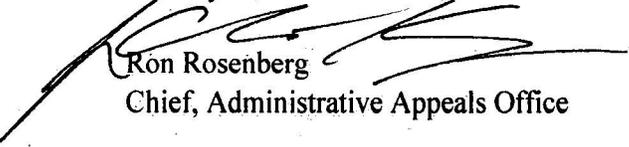
ON BEHALF OF PETITIONER:



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.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Cleveland, Ohio, (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 15-year-old citizen of El Salvador 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 petitioner sought the juvenile court order primarily for immigration purposes. The director further 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 El Salvador on January 18, 1998. On February 27, 2012, the petitioner was apprehended at the Mexican border when she attempted to enter the United States. On April 11, 2012, 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 maternal aunt, in [REDACTED] Ohio. On September 25, 2012, the [REDACTED] Court of Common Pleas, Juvenile Division tentatively placed the petitioner under the custody of [REDACTED] subject to approval of the Court of Common Pleas. On October 15, 2012, the Court of Common Pleas, Juvenile Division in [REDACTED] (juvenile court) approved and adopted the Magistrate's decision. The petitioner filed this Form I-360, Petition for Special Immigrant, on October 16, 2012. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, counsel submits a brief asserting that the petitioner was abandoned by her mother and 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 classification as a special immigrant juvenile.

*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>

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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 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*, 4-5 (May 27, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

In this case, the director determined that (1) the juvenile court order lacked the requisite findings that it was not in the petitioner's best interest to return to El Salvador and that parental reunification was not viable due to abuse, neglect, abandonment or a similar basis under state law; (2) the court order was further deficient because it determined that the petitioner was a dependent child rather than neglected; and (3) the petitioner's request for SIJ classification was not bona fide. The petitioner has overcome these grounds for denial on appeal.

Regarding the court findings, a review of the record shows that the juvenile court order adopted the decision of the Magistrate, which incorporated an agreement between the parties, including a Guardian Ad Litem (GAL), that the petitioner required an adjudication of dependency because reunification with her parents was not viable as she had never lived with either of them and it was not in her best interest to return to El Salvador. The director incorrectly asserted that while the parties entered into the agreement, there is no evidence that the court concurred. The juvenile court order expressly states that the court, "upon an independent review of the matter... affirms, approves and adopts the Magistrate's Decision," which found that the allegations of the complaint had "been proven by clear and convincing evidence." Referenced as an attachment in the order itself, the agreement states that the petitioner's reunification with either of her parents is not viable as she has not lived with them and it is not in her best interest to return to El Salvador. The record also contains the petitioner's aunt's Complaint on Neglected Child which stated that the petitioner has never lived with her father, who is unemployed and unable to care for her and that her mother has not resided or cared for the petitioner since she was a two-month-old infant. In her sworn statement, Ms. [REDACTED] the petitioner's aunt, explained that the petitioner's father was already married when the petitioner was born and never married the petitioner's mother, who left her as an infant in the full-time care of her maternal grandmother while the petitioner's mother moved to another city to work. The petitioner's mother then moved to the United States when the petitioner was four years old and the two have not had a relationship even after the petitioner's arrival in the United States. The complaint further stated that notwithstanding the fact that she also resides in Ohio, the petitioner's mother was unable and unwilling to provide for the petitioner.

In addition to the petitioner's lack of a viable relationship with her mother, the record shows that the petitioner has never resided with or been cared for by her father since birth. In her sworn statement, Ms. [REDACTED] explained that the petitioner's father had never acknowledged the petitioner as his daughter because he had his own family to support. The petitioner's father also submitted an affidavit during the guardianship proceedings in which he consented to the petitioner's aunt's custody because he is unemployed and the petitioner faced danger in El Salvador due to gang activity at her school and in her community. In her own affidavit, the petitioner states that she has no memory of ever living with her mother, that she never lived with her father who hid her from his wife, and that she was raised by her maternal grandmother in El Salvador. In her sworn statement and complaint, Ms. [REDACTED] also attested that the petitioner's grandmother is unable to care for the petitioner in El Salvador due to her old age and deteriorating health. Accordingly, the juvenile court order contains the requisite non-viability and best-interest determinations and the record provides a reasonable factual basis for those findings.

The director also found the court order to be deficient because it amended the charge in the Complaint on Neglected Child under Ohio Revised Code § 2151.03(A)(3) to a dependent child complaint under Ohio Revised Code § 2151.04 and therefore the court did not find that reunification was not viable due to abuse, neglect, abandonment, or a similar basis under state law as required by section 101(a)(27)(J)(i) of the Act. On appeal counsel argues that the juvenile court determined that parental reunification was not viable due to the petitioner's dependency, a basis similar to abandonment under Ohio law. The record shows that a juvenile court's adjudication of a child as dependent is similar to adjudicating the child to be abused or neglected under Ohio law.

An SIJ petitioner bears the burden of proof to establish that the basis for a juvenile court's non-viability finding is similar to abuse, neglect or abandonment under a particular state's law. Sections 101(a)(27)(J)(i) and 291 of the Act, 8 U.S.C. §§ 1101(a)(27)(J)(i), 1361. In making this determination, USCIS may consider whether the nature and elements of the state law are similar to the nature and elements of abuse, abandonment, or neglect.<sup>3</sup> Other significant factors include whether the state treats such children similarly to those adjudicated abused, abandoned or neglected in regards to their eligibility for legal protection or other state services; and evidence regarding the conduct which resulted in the petitioner's need for a dependency or custody order.<sup>4</sup>

In this case, Ohio law states, in pertinent part, that a dependent child is any child:

- (A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;
- (B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;
- (C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

Ohio Rev. Code Ann. § 2151.04 (West 2013).

Ohio does not have a separate provision for abandonment, which is instead incorporated into the provision for neglect. Under Ohio law, a neglected child is defined, in relevant part, as any child:

- (1) Who is abandoned by the child's parents, guardian, or custodian;
- (2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;
- (3) Whose parents, guardian, or custodian neglects the child or refuses to provide

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<sup>3</sup> See Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. pts. 204, 205, and 245) (explaining that the analysis requires a case-by-case determination given the variations in state laws).

<sup>4</sup> See *Id.* (providing examples of evidence that may be submitted to establish a similar basis).

proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;

(4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition[.]

Ohio Rev. Code Ann. § 2151.03 (West 2013). An abused child is defined as any child who:

(A) Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

(E) Is subjected to out-of-home care child abuse.

Ohio Rev. Code Ann. § 2151.031 (West 2013).

Once a judicial determination has been made that a child is dependent, abused, or neglected, the same dispositional alternatives are applicable under Ohio law. Specifically,

(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal

custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings.

\* \* \*

(6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

Ohio Rev. Code Ann. § 2151.353 (West 2013).

Ohio's laws defining dependent, neglected and abused children are similar in nature as all three provisions explicate circumstances in which the lack of proper parental care renders the child vulnerable and in need of state intervention and legal protection. The dispositional alternatives for dependent children are also identical to those applicable to abused or neglected children under Ohio law. Here, the juvenile court found that the petitioner's reunification with either of her parents was not viable because neither parent had resided with her since infancy, leaving her "without adequate parental care" and a dependent child in need of protection under Ohio Statute § 2151.04. Consequently, the court granted custody to the petitioner's aunt. Other evidence shows that the petitioner's need for juvenile court protection arose from her parents' abandonment, inability and unwillingness to care for her. Accordingly, the petitioner has established on appeal that in her case, the juvenile court's determination that reunification with her parents was not viable due to her status as a dependent child was made on a basis similar to abuse and neglect under Ohio law.

In her decision, the director also erroneously determined that the petitioner's request for SIJ classification was not bona fide because she lived in the same city as her mother, her mother contacted her by telephone, and periodically visited her. The director stated that while the petitioner's mother agreed to allow another person to have custody of her daughter, that guardian is her own sister. 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 reside and study in [REDACTED] Ohio. The director concluded that the juvenile court dependency order was not sought, therefore, to alleviate her parents' abandonment and neglect, 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 the SIJ request was not bona fide. The fact that the petitioner has sporadic contact with her mother does not negate the juvenile court's finding that she lacked adequate parental care since infancy. Additionally, 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 El Salvador 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.

Here, the petitioner has shown by a preponderance of the evidence that her request for SIJ classification is bona fide. The juvenile court order contains the requisite determinations that it is not in the petitioner's best interest to return to El Salvador and that parental reunification was not viable due to her dependency, a basis similar to abuse or neglect under Ohio law. The record in this case also 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 this case, 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has met her burden. The appeal will be sustained. The June 21, 2013 decision of the director will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained.