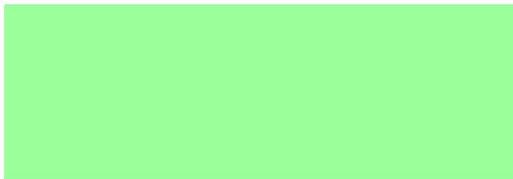


(b)(6)

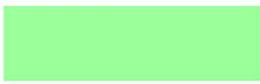
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



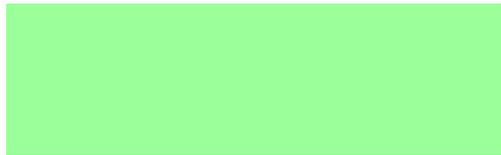
Date: **NOV 18 2013** Office: NEW YORK, NY

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)

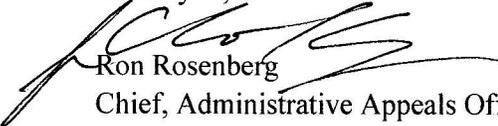
ON BEHALF OF PETITIONER:



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, New York, New York (the “director”), denied the special immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded to the director for further action.

The petitioner is a 21-year-old citizen of Jamaica 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 petitioner’s request for SIJ classification because she failed to establish her age. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director’s ground for denial. However, because the petition is not approvable based on the present record, the matter will be remanded to the director for further action and issuance of a new decision.

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 Jamaica on March 19, 1992 and claims she entered the United States on March 19, 2005 when she was 13 years old. On March 18, 2013, the Family Court of the State of New York, Queens County (juvenile court) declared the petitioner a dependent of the Family Court. The petitioner filed this Form I-360, Petition for Special Immigrant, on March 19, 2013, her 21st birthday. The director denied the petition and counsel timely appealed.

Analysis

The director determined the petitioner was ineligible for SIJ classification because the evidence submitted below showed that she was already 21 years of age at the time of filing. The relevant evidence in the record includes the petitioner's birth certificate without the specific time that she was born, a court order declaring the petitioner a dependent of the juvenile court and making the requisite nonviability of parental reunification and best-interest determinations, and the petitioner's affidavit submitted in the Guardianship of the Person and Special Findings Proceedings.

On appeal, counsel submits an affidavit from the petitioner's mother stating that the petitioner was born in the evening on March 19, 1992 and evidence that the Form I-360 was filed on March 19, 2013 at 7:23 A.M. The petitioner's birth certificate does not state the exact time of her birth. In her affidavit, the petitioner's mother [REDACTED] credibly describes the circumstances of the petitioner's birth. [REDACTED] states that she remembers going into labor just after midnight on March 19, 1992 and that she was in labor for 17 or 18 hours. She further describes that it was dark outside when the petitioner was born. The petitioner has shown by a preponderance of the evidence that she was born in the evening of March 19, 1992.

Counsel asserts that although the Form I-360 was filed on the day that the petitioner turned 21 years old, it was filed prior to the exact time that the petitioner was born and therefore she was considered to still be "under the age of 21" for purposes of timely applying for SIJ classification. The petitioner's Form I-360 was date-stamped as received by United States Citizenship and Immigration Services (USCIS) on March 19, 2013 and the Federal Express tracking confirmation confirms that the Form I-360 was delivered at 7:23 A.M. As this was approximately twelve hours prior to the time that the petitioner was born, the petitioner was "under the age of 21" when her Form I-360 was filed. Consequently, the director's contrary determination shall be withdrawn.

The petition is not approvable, however, because the juvenile court order is deficient.¹ SIJ classification requires that the juvenile court dependency or custody order be issued in accordance with state law. The record shows that the petitioner was declared to be dependent

¹ 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).

upon the New York Family Court in a Proceeding for Special Findings. Section 119 of the New York Family Court Act defines a minor as a person who has not “attained the age of eighteen years.” N.Y. FAM. CT. ACT § 119 (McKinney 2013). Section 661 of the Family Court Act allows for guardianship past the age of majority to individuals under the age of 21 years old who consent to the appointment of a guardian. N.Y. FAM. CT. ACT § 661 (McKinney 2013). In this case, the petitioner was 20 years old when she was declared dependent on the juvenile court but her consent to the appointment is not noted in the guardianship order nor does the order cite to any exception supporting its jurisdiction. 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).

The director’s May 23, 2013 decision denying the petitioner’s request for SIJ classification was based solely on the determination that the petitioner failed to file the Form I-360 while less than 21 years of age. The sole ground for denial has now been overcome, but the petitioner remains ineligible for SIJ classification because the juvenile court order dated March 18, 2013 is deficient and fails to establish its jurisdiction over the petitioner. Because the director did not address this deficiency in her decision, the matter must be remanded to the director for further action such as issuance of a Request for Evidence (RFE) to provide the petitioner with the opportunity to address the remaining deficiencies of record.

Conclusion

In this case, as in all visa petition proceedings, 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). Although the petitioner has overcome the director’s ground for denial, she remains ineligible for SIJ classification on other grounds. Accordingly, the director’s decision will be withdrawn and the matter will be remanded to the director for further action in accordance with the preceding discussion. The director shall then issue a new decision, which shall be certified to the AAO if adverse to the petitioner.

ORDER: The May 23, 2013 decision of the New York City Field Office is withdrawn. The petition is remanded to that office for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.