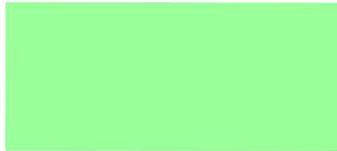


(b)(6)

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



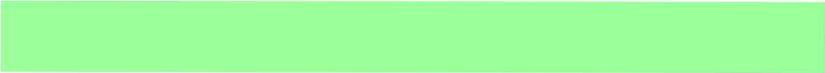
U.S. Citizenship
and Immigration
Services



Date: OCT 25 2013

Office: NEWARK, NJ

File: 

IN RE: 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:

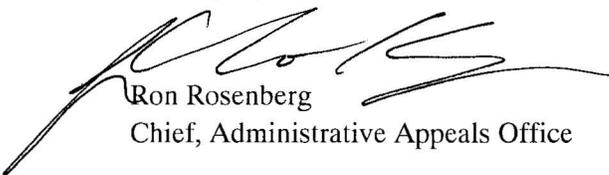
SELF-REPRESENTED

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

The petitioner is an 18-year-old citizen of Egypt 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 he found that the petitioner sought the juvenile court order primarily for immigration purposes, rather than for relief from parental abuse, neglect or abandonment. On April 15, 2013, the AAO dismissed the appeal. On motion, the petitioner submits a brief and additional evidence.

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[.]

When adjudicating a petition for special immigrant juvenile status, United States Citizenship and Immigration Services (USCIS) examines the juvenile court order only to determine if the order contains the requisite findings of dependency or custody; nonviability of family reunification due to parental abuse, neglect or abandonment; and the best-interest determination, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. USCIS then reviews the relevant evidence to ensure that the record contains a reasonable factual basis for the court's determinations, which demonstrate that the court order was sought primarily to obtain relief from abuse, neglect or abandonment. USCIS is not the fact finder in regards to 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). Where the record lacks evidence providing a reasonable factual basis for the juvenile court order, USCIS may request additional evidence from the petitioner to establish a reasonable basis for the agency's consent to SIJ classification.

Pertinent Facts and Procedural History

The record reflects that the petitioner was born in Egypt on July 1, 1995. On August 17, 2011, the petitioner's aunt filed a petition for guardianship of the petitioner with the Superior Court of New Jersey, On September 1, 2011, the Court appointed the petitioner's aunt as guardian of the petitioner when the petitioner was 16 years old. The petitioner filed the instant Form I-360 on September 15, 2011. The director issued a Request for Evidence (RFE) and Notice of Intent to Deny (NOID) and after reviewing the petitioner's response, denied the petition for failure to establish that the court order was not sought primarily for immigration purposes. The petitioner timely appealed and the AAO dismissed the appeal on April 15, 2013. The petitioner submitted a timely motion to reopen and reconsider.

The petitioner does not cite to binding case law or precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). The petitioner's statement also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. *See id.* (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

The petitioner's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). On motion, the petitioner submits a brief and country conditions information. Accordingly, the motion to reopen is granted.

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 additional evidence submitted on motion does not overcome the director's ground for denial. The appeal will remain dismissed for the following reasons.

Analysis

In its prior decision on April 15, 2013, the AAO determined that although the juvenile court order in the petitioner's case included the requisite nonviability-of-reunification and best-interest determinations, the record did not provide a reasonable factual basis for the court's determination that the petitioner was abandoned by his parents. The evidence submitted below to support the petitioner's aunt's guardianship petition included her affidavit, a letter from the priest of the [REDACTED] that the petitioner attended in Egypt, and an affidavit from the petitioner's parents giving his aunt permission to act as his guardian. The affidavits and letter from the [REDACTED] priest all indicated that the petitioner left Egypt to escape its unstable country conditions. Additionally, the record showed that rather than abandoning him, the petitioner's parents arranged for his travel to the United States for his safety and well-being. The AAO determined that the petitioner failed to establish that his request for SIJ classification was bona fide and merited the agency's consent.

On motion, the petitioner submits a brief, media articles, a petition, and a letter about the mistreatment of [REDACTED] in Egypt. He also resubmits the letter from his priest and his parents' affidavit. In his brief, the petitioner asserts that USCIS violated his Fifth Amendment right to due process by applying a higher standard of proof and ignoring the totality of the evidence submitted as well as public policy. The director's and AAO's prior decisions did not impose a higher standard of proof or disregard relevant evidence or any binding policy. The petitioner also has not established that USCIS violated any constitutional right to procedural or substantive due process that he may have regarding his petition for SIJ classification. Where due process rights adhere, what procedures are required "depends on the particular situation." *Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir.1996). For SIJ petitions, USCIS has promulgated regulations which provide a petitioner with at least two opportunities to establish his or her eligibility. 8 C.F.R. § 204.11.

In this case, the petitioner had four opportunities to submit evidence providing a reasonable factual basis for the court's determination that he was abandoned by his parents: initially when filing his petition, in response to the director's RFE and NOID, on appeal and on motion. Rather than addressing this issue on motion, the petitioner reasserts that he has been "harassed, assaulted and threatened from extremist Islamic groups" because he is a [REDACTED] and claims that the director and the AAO incorrectly determined that the juvenile court did not have a reasonable factual basis for its decision that it would not be in the petitioner's best interest to return to Egypt because the court took judicial notice of the country conditions there. The petitioner is in error. The AAO did not question the juvenile court's best interest determination. The record shows that it is not in the best interests of the petitioner to return to Egypt. Instead, in its previous decision, the AAO determined that the record lacked a reasonable basis for the court's determination of the non-viability of reunification with the petitioner's parents due to their abandonment.

On motion, the petitioner does not establish that he was abandoned by his parents. He fails to cite to any specific information regarding the claimed parental abandonment and does not provide any probative evidence sufficient to support the juvenile court order's finding that he was abandoned by his parents. He argues that public policy will be served if he is protected under the spirit of SIJ law and

that the evidence submitted on motion demonstrates that the violence and political turmoil in Egypt make reunification with his parents impossible. However, the issue in the instant case is not the religious persecution and political unrest in Egypt but rather that the statute requires a finding of non-viability of reunification with a child's parents due to parental abuse, neglect, abandonment or a similar basis found under State law. Section 101(a)(27)(J)(i) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i).

The relevant evidence in the record fails to establish that the petitioner is eligible for SIJ classification because the record does not show that the petitioner sought the juvenile court order primarily to obtain relief from his parents' abuse, neglect, or abandonment. The present record as supplemented on motion, still demonstrates that the petitioner sought the order primarily to obtain lawful permanent residency in the United States and protection from the unstable country conditions in Egypt, not to obtain relief from his parents' abandonment. Consequently, the present record does not support the consent of USCIS to a grant of SIJ classification in this case, as required by section 101(a)(27)(J)(iii) of the Act.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will remain dismissed and the petition will remain denied.

ORDER: The motion to reopen is granted. The April 15, 2013 decision of the Administrative Appeals Office is affirmed and the petition remains denied.