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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: APR 08 2014

Office: CHICAGO, IL

FILE: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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)

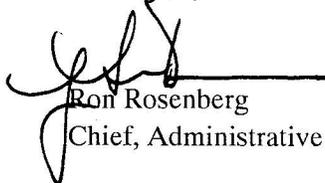
ON BEHALF OF PETITIONER:

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, Chicago, Illinois, (the “director”), denied the special immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director’s decision shall be withdrawn in part and affirmed in part. The appeal will be dismissed.

The petitioner is a 17-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).

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 and Procedural History

The petitioner was born in Honduras on April 18, 1996. In December 2009, the petitioner entered the United States without inspection, admission or parole and was later apprehended in Texas near the Mexican border. In January 2010, the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), released the petitioner into the custody of his

mother in Illinois. On August 7, 2012, the [REDACTED] Illinois [REDACTED] Circuit Court granted sole custody of the petitioner to his mother. The order stated, in pertinent part:

The father of the minor child is [REDACTED]. . . . The Petitioner, [the petitioner's mother] is granted sole legal custody of the minor The Respondent, [REDACTED] had abandoned the minor child in Honduras. . . . It is not in the best interest of the minor child nor is it viable that reunification between the Respondent and the minor child occurs based on the Respondent's past abandonment of the minor child. . . . It is not in the best interest of the minor child that he be returned [to] his country of origin, Honduras.

The petitioner filed this Form I-360, Petition for Special Immigrant, on October 5, 2012. The director subsequently issued a Request for Evidence (RFE) of an Illinois State Juvenile Court order. In response, counsel resubmitted a copy of the [REDACTED] County Circuit court order and asserted that the order established the petitioner's eligibility. On July 1, 2013, the director denied the petition because she found that the [REDACTED] County Circuit Court was not equivalent to a juvenile court and because the order was not supported by factual findings or other court records regarding abuse, neglect or abandonment. The director also concluded that the petitioner was ineligible for SIJ classification because there was no evidence that he had been placed within a federal child welfare system due to abuse, neglect or abandonment.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, counsel asserts that the director erroneously concluded that the custody order was not sufficient; that the director mistakenly cited an older version of the SIJ statute; and that the director incorrectly determined that placement in a child welfare system was required for SIJ classification. Counsel also submits a five-sentence affidavit from the petitioner regarding his father's abandonment. Although portions of the director's decision shall be withdrawn, the record, as supplemented on appeal, still fails to establish the petitioner's eligibility and the appeal will be dismissed for the following reasons.

Analysis

In her decision, the director mistakenly quoted section 101(a)(27)(J) of the Act prior to its substantive amendment by 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. The director also erroneously concluded that the custody order was not sufficient because it was not issued by a "juvenile court." For SIJ classification, the term "juvenile court" is defined as a court within the United States with "jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). In Illinois, circuit courts are courts of general jurisdiction, which includes the appointment of guardians of minors under the Illinois Probate Act. See 755 Ill. Comp. Stat. Ann. Cpt. 5 §11-5(a) (appointment of guardians of minors); 705 Ill. Comp. Stat. Ann. Cpt. 35 § 25 (powers of the circuit courts). Accordingly, the [REDACTED] County, Illinois [REDACTED] Circuit Court may be considered a juvenile court for SIJ purposes.

The director also erroneously concluded that evidence of placement in "the United States child welfare system due to abuse, neglect or abandonment" was required for SIJ classification. No

such requirement exists. Subsection 101(a)(27)(J)(i) of the Act requires that the juvenile court declare the child dependent on the court; place the child in the custody of a state (not federal) agency or department; or place the child in the custody of an individual or entity appointed by the state. Any one of these three actions will suffice. Accordingly, in this case, the juvenile court's order granting the petitioner's mother full legal custody meets this requirement.

The portions of the director's decision containing the preceding three errors shall be withdrawn. Nonetheless, the appeal will be dismissed because the juvenile court order is deficient and the present record lacks a reasonable factual basis for the order warranting USCIS consent to the grant of SIJ classification in this case.

The juvenile court order remains deficient because it identifies the petitioner's father as [REDACTED] but the petitioner's birth certificate names his father as [REDACTED]. The record contains no explanation of this discrepancy or any evidence that these two names refer to the same individual. Without such evidence, we cannot conclude that the juvenile court order actually refers to the petitioner's father, as identified on his birth certificate.

Even if the petitioner's father was correctly identified in the order, the present record is insufficient to warrant the agency's consent to SIJ classification. Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through USCIS to consent to the grant of SIJ status. This consent determination "is an acknowledgement that the request for SIJ classification is bona fide,"¹ 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).²

When deciding whether to consent to the grant of SIJ status, USCIS is limited to adjudicating the SIJ petition based on the record of proceeding before the agency. USCIS's authority does not extend to a readjudication of the dependency, commitment or custody determinations within the jurisdiction of state juvenile courts. *Id.* Nonetheless, to grant consent and determine that the request for SIJ classification is bona fide, USCIS must ensure that the record provides a reasonable factual basis for the court order.³ Orders that include or are supplemented by specific findings of fact are generally sufficient, but where such orders are deficient, USCIS may request

¹ 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).

² See *Id.* at 3 ("An approval of an SIJ petition itself shall be evidence of the Secretary's consent."). 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) (hereinafter *SIJ Memo #3*) at 2 ("consent is an acknowledgement that the request for SIJ classification is bona fide.").

³ *SIJ Memo #3* at 4-5.

additional evidence of the records underlying the court order or other relevant evidence establishing the factual basis for the order.⁴

In this case, the juvenile court order contains the requisite determination that it is not in the petitioner's best interest to return to Honduras and that reunification with the petitioner's father is not viable due to his father's abandonment, but the order contains no factual findings regarding the petitioner's best interest or his father's abandonment and the order references the petitioner's father by a different name than the father identified on his birth certificate. In his affidavit submitted on appeal, the petitioner briefly states that he has only seen his father twice and that his father has never supported him and has been absent from his life. The petitioner does not identify his father by name. On appeal, counsel asserts that the juvenile court order was issued after "an evidentiary hearing in which testimonial and documentary evidence was presented," but counsel submits no copies or summary of such testimony or documents and the order does not reference any such hearing.

The petitioner's affidavit attests to his father's abandonment, but without resolving the discrepancy regarding his father's name and identity, his affidavit does not provide a reasonable factual basis for the court's determination of his father's abandonment. The petitioner's affidavit also does not address the court's best-interest determination. Apart from the petitioner's affidavit, counsel submits no additional evidence on appeal that would provide a reasonable factual basis for the juvenile court order such as, for example, the petition for custody, any other documents filed with the court, or if such documents are unavailable, any other relevant evidence such as affidavits from the petitioner's mother or other individuals who have knowledge of the petitioner's circumstances.

Conclusion

The petitioner has not shown that the Respondent named in the juvenile court order is the same person identified as his father on his birth certificate and the order thus fails to meet the requirements of subsection 101(a)(27)(J)(i) of the Act. Even if his father were properly identified in the juvenile court order, the order lacks specific factual findings and the present record contains insufficient evidence providing a reasonable factual basis for the order. Consequently, consent to SIJ classification is not warranted in this case under subsection 101(a)(27)(J)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility for SIJ classification 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). He has failed to meet this burden and the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.

⁴ *Id.* at 5. See also Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981-82 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. §§ 204.11, 205.1, 245.1) (discussing the types of evidence that may be considered when making the consent determination).