



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **APR 17 2015** Office: CHARLOTTE, NORTH CAROLINA 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:

[REDACTED]

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 Charlotte, North Carolina Field Office Director (the “director”) denied the special immigrant visa petition. The matter is now before the AAO on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner is a 19-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).

The director determined that the petitioner is not eligible for SIJ classification because the juvenile court’s temporary custody order did not make a finding that reunification with one or both of the petitioner’s parents is not viable, and he denied the petition accordingly. On appeal, the petitioner, through counsel, submits a brief.

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. 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, amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). See section 235(d) of the TVPRA; see also Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs. (USCIS), et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009) (hereinafter “*TVPRA – SIJ Provisions Memo*”). The SIJ provisions of the TVPRA are applicable to this appeal. See Section 235(h) of the TVPRA.

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[.]

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through a U.S. Citizenship and Immigration Services (USCIS) Field Office Director, to consent to the grant of special immigrant juvenile status. This consent determination "is an acknowledgement that the request for SIJ classification is bona fide," meaning that neither the custody order nor the best interest determination were "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 or abandonment." 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*, at 2 (May 27, 2004)(hereinafter "*SIJ Memo #3*")(quoting H.R. Rep. No. 105-405 at 130 (1997)).

Pertinent Facts

The record reflects that the petitioner was born in Honduras on [REDACTED] and he entered the United States without inspection from the Mexican border on or about September [REDACTED]. He was apprehended by U.S. Border Patrol at the time of his entry in [REDACTED] Texas and issued a Notice to Appear in removal proceedings. The petitioner was taken into custody of the Office of Refugee Resettlement (ORR).

On September 18, 2013, the petitioner was released from ORR custody to his mother, [REDACTED]. On December 19, 2013, the General Court of Justice District Court Division, [REDACTED] (hereinafter "juvenile court") granted an ex parte emergency custody order to the petitioner's mother. See *First Amended Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED] (December 19, 2013).

The petitioner filed this Form I-360, Petition for Special Immigrant, on December 26, 2013. The director subsequently issued a Notice of Intent to Deny (NOID). The petitioner responded to the NOID with a brief, which the director found to be insufficient to overcome the intended basis of denial. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. The petitioner's assertions on appeal do not overcome the director's grounds for denial. The appeal will remain dismissed for the following reasons.

Analysis

Nonviability-of-Reunification

On December 19, 2013, the juvenile court entered an order containing the following findings:

9. The child is a citizen of Honduras and has not yet attained his 21st birthday. He is currently [REDACTED] years of age having been born [REDACTED]
10. The minor child is unmarried.
11. The child has been found to be eligible and continues to be eligible for long term foster care (as defined in 8 C.F.R. 204.11) based on the child being abandoned and neglected by the father when the child was 8 years of age.
12. It is not in the best interests of the child to be returned to his country of origin, Honduras, based upon he sworn statement of the Mother that the minor child would suffer neglect if he were to be returned to Honduras because he was unable to obtain the basic necessities of life prior to his arrival in the United States and there are no Parents in Honduras to care for him. Further, based upon the statement of the Mother, the child would be exposed to the risk of violence and his safety would be in jeopardy.

First Amended Order Granting Ex Parte Emergency Custody (filed December 20, 2013).

The director determined that the juvenile court order is deficient because it does not specifically find that the petitioner's reunification with one or both of his parents is not viable. On appeal, the petitioner asserts that the juvenile court found that he was eligible for long-term foster care and as a result it determined that reunification with his father is not viable due to abuse, neglect and abandonment. The TVPRA removed the need for a juvenile court to deem a juvenile eligible for long-term foster care due to abuse, neglect or abandonment, and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law. See TVPRA section 235(d)(1)(A); *TVPRA - SIJ Provisions Memo* at 2. The regulations explain that, "[e]ligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option." 8 C.F.R. § 204.11(a). While, as the petitioner contends, the order indicates that the juvenile court determined that reunification with the petitioner's father is not viable due to abandonment and neglect, the order is still deficient because it only makes a temporary finding of nonviability-of-reunification.

An order is temporary in North Carolina "if either (1) it states a clear and specific reconvening time in the order and the time interval between the two hearings was reasonably brief; or (2) the order does not determine all issues." *Lamond v. Mahoney*, 583 S.E.2d 656, 659 (N.C. App. Ct. 2003)(citing *Brewer v. Brewer*, 533 S.E.2d 541, 546 (N.C. App. Ct. 2000)). Here, the juvenile court awarded the petitioner's mother the "temporary care, custody, and control" of the petitioner subject to a hearing on January 9, 2014. *First Amended Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED] (December 19, 2013). The petitioner did not submit a

permanent custody order from the subsequent court appointed hearing. The director informed the petitioner of this deficiency in the denial notice. On appeal, the petitioner asserts that "there is no basis for disqualification of SIJ based on the permanency of a court's custody order." However, temporary custody orders in North Carolina may leave certain issues outstanding "pending the resolution of a claim for permanent custody." *Regan v. Smith*, 509 S.E.2d 452, 454 (N.C. App. Ct. 1998). The juvenile court's temporary determination does not establish that "family reunification is no longer a viable option" because the court did not ultimately grant permanent custody to the petitioner's mother. 8 C.F.R. § 204.11(a).¹ The petitioner therefore has not satisfied the nonviability-of-reunification requirement of section 101(a)(27)(J)(i) of the Act.

USCIS Consent

The director also determined that the record does not contain specific factual findings to support the court order and therefore consent is not warranted in this case. When adjudicating a petition for special immigrant juvenile status, USCIS examines the juvenile court order 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. Court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS's consent.² Orders lacking specific factual findings are insufficient to warrant the agency's consent and must be supplemented by other relevant evidence demonstrating the factual basis for the court's order.³

On appeal, the petitioner asserts that the court order "should not be questioned or second-guessed by the adjudicator because it adequately details the bases for the court's rulings." The juvenile court order states that the petitioner's father abandoned and neglected him. *See First Amended Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED] (December 19, 2013). However, it does not provide any specific factual findings to support this determination. The record contains no other evidence from the juvenile court proceedings such as, for example, the underlying motion for emergency custody, the transcript of any hearing held on the motion, affidavits of those with knowledge of the petitioner's situation, or any other evidence the court considered regarding its findings. Because of these deficiencies, consent to SIJ classification under section 101(a)(27)(J)(iii) of the Act is not warranted in this case.

Conclusion

The petitioner failed to establish that he was the subject of a qualifying juvenile court custody order. He has also not shown by a preponderance of the evidence that his request for SIJ

¹ See also Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54980, 54985 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11)(SIJ petitioner must establish that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.).

² See *SIJ Memo #3* at 4-5 (May 25, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

³ *Id.* at 5; see also Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981, 54985.

classification is bona fide and merits the agency's consent. Consequently, the petitioner does not meet subsections 101(a)(27)(J)(i) and (iii) of the Act and the petition will remain denied.

In these 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed. The petition will remain denied.