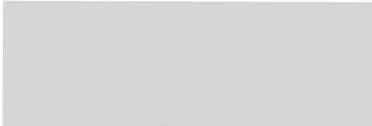




U.S. Citizenship
and Immigration
Services

(b)(6)



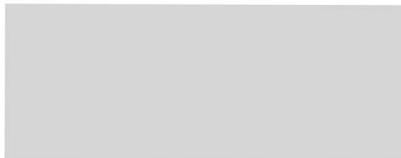
Date: **APR 30 2015**

FILE #: [REDACTED]
PETITION RECEIPT #: [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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Omaha, Nebraska Field Office Director (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 dismissed and the petition will remain denied.

The petitioner is a 20-year-old citizen of Guatemala 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 record did not provide a reasonable factual basis for the court’s custody order, and he denied the petition accordingly. On appeal, 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[.]

Pertinent Facts

The petitioner was born in Guatemala on [REDACTED] 1995. He entered the United States on or about September 18, 2012 from the Mexican border. The petitioner was apprehended by U.S. Border Patrol on September 21, 2012 at or near [REDACTED] Arizona. On October 25, 2012, he was released from Office of Refugee Resettlement (ORR) custody to his brother, [REDACTED]. On December 10, 2013, the County Court of [REDACTED] Nebraska (hereinafter "county court") granted the petitioner's brother temporary guardianship of the petitioner. *Order Appointing Temporary Guardian for Minor Child*, Ct. of [REDACTED] Neb., No. [REDACTED] (Dec. 10, 2013). The court issued a final order of guardianship to the petitioner's brother on June 14, 2014, when the petitioner was 19 year old. *Order Appointing Guardian for a Minor*, Ct. of [REDACTED] Neb., No. [REDACTED] (June 14, 2014).

The petitioner filed this Form I-360, Petition for Special Immigrant, on December 19, 2013. In a subsequent request for evidence (RFE) of the facts supporting the county court's custody order, the director requested a copy of the original application for guardianship, a transcript of the guardianship hearing and evidence submitted with the guardianship petition. In response to the RFE, the petitioner asserted that the court order itself contains specific findings of fact. The director reviewed the petitioner's response to the RFE and issued a Notice of Intent to Deny (NOID) the petitioner's Form I-360 SIJ petition because the record lacked evidence of the facts supporting the county court's custody order. The petitioner failed to respond to the NOID. The director concluded that the petition does not warrant consent to grant SIJ classification, as required by section 101(a)(27)(J)(iii) of the Act, because the record lacks sufficient evidence providing a reasonable factual basis for the order.

On appeal, the petitioner submits a copy of the guardianship application filed with the county court and an affidavit. The petitioner asserts that the findings of fact contained within the court's orders and the guardianship application are sufficient to demonstrate that his request for SIJ classification is bona fide. We review these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims and the additional evidence submitted on appeal do not overcome the director's ground for denial. The appeal will remain dismissed for the following reasons.

*Analysis**USCIS Consent*

The petitioner bears the burden of proof to establish that his request for SIJ classification is bona fide and that he sought the guardianship court order primarily to obtain relief from parental abuse, neglect, or abandonment, rather than to gain lawful permanent residency. H.R. Rep. No. 105-405 at 130 (1997); *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) at 2 (hereinafter *SIJ Memo #3*). Court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS's consent. 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. *SIJ Memo #3* at 5; *see also* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981, 54985 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11). Here, the petitioner did not provide any evidence to support a reasonable factual basis for the court order.

On December 10, 2013, the county court entered a temporary order of guardianship containing the following findings:

2. That the minor child's father and the minor child's mother abandoned and neglected him by not being able to provide for his daily needs; thus reunification with either is not possible.
3. That it is in the minor child's best interest to remain in the custody and control of the Petitioner in the United States and to not return to Guatemala where he would be without a responsible adult to care for his daily needs.

Order Appointing Temporary Guardian for Minor Child (Dec. 10, 2013).

The county court entered the final order of guardianship on June 14, 2014 with the following findings:

5. Appointment of a guardian is necessary because it is in the best interest of the child because the minor has been abandoned by his mother and father and reunification with them is not possible. The minor child's mother and father were not and are not able to provide for the minor child. The minor child was subject to neglect and abandonment and it is [] in the minor's best interest to remain in the care, custody, and control of the guardian and to not return to Guatemala.

Order Appointing Guardian for a Minor (June 14, 2014).

The county court order includes the requisite nonviability-of-reunification determination and states that the petitioner's parents abandoned and neglected him, but it does not offer any specific factual details upon which this determination was made. The best-interest determination states that it is not in the petitioner's best interest to return to Guatemala, but it does not explain the basis for such a finding. Although the petitioner submits the underlying guardianship application on appeal, this application simply mirrors the court's orders and fails to provide any additional details to establish a factual basis for the court's findings. *See Application for Appointment of Temporary and Permanent Guardian of Minor Child*, dated December 9, 2013.

The petitioner in his affidavit submitted on appeal recounts that his father abandoned him when he was ten years old and his mother abandoned him when he was fourteen years old. He states that he lived in poverty and faced threats from gangs. *Affidavit of* [] dated August 21, 2014. The petitioner, however, has failed to establish that the court considered these facts in its nonviability-of-reunification and best interest determinations. The record contains no

evidence from the county court proceedings such as, for example, the transcript of any hearing held on the application or any other evidence the court considered regarding the nonviability-of-reunification and best-interest determinations. *See SIJ Memo #3* at 4-5 (describing the types of evidence that USCIS may request and consider when making a consent determination). Because of these deficiencies, consent to SIJ classification under section 101(a)(27)(J)(iii) of the Act is not warranted in this case.

Qualifying Juvenile Court Order

Even if we determined that the petitioner's request for SIJ classification is bona fide, the petition would nonetheless remain denied because the record does not show that the petitioner is or was the subject of a qualifying juvenile court order.¹ The plain language of the statute and the regulations require that the court order be issued pursuant to the court's jurisdiction over the petitioner as a juvenile under state law. The term "juvenile court," as used in section 101(a)(27)(J)(i) of the Act is defined as a court "having jurisdiction under state law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). A dependency or custody order issued by a court with jurisdiction over both adults and juveniles will only suffice if the record shows that the court exercised jurisdiction over the petitioner as a juvenile. *See* 8 C.F.R. § 204.11(c)(3) (requiring the court order to be in compliance with state law governing juvenile court dependency).

Here, the record lacks any evidence that the guardianship order was issued pursuant to the court's jurisdiction over the petitioner as a juvenile. The age of majority in Nebraska is nineteen years and a person who reaches this age is considered an adult. *See* Neb. Rev. Stat. § 43-2101 (2014). A preliminary guardianship order was issued over the petitioner when he was eighteen years old, but that order is deficient because it only makes a temporary finding of nonviability-of-reunification. The final guardianship order in this case was not issued until six months later, when the petitioner was nineteen years old, an adult under Nebraska law. *Id.* Guardianship orders are terminated under Nebraska law for individuals who reach nineteen years of age unless an exception is made. *See* Neb. Rev. Stat. § 43-1312.01 (2014). Although the guardianship order references the petitioner as a "minor," the court did not indicate that it made an exception. Nor did it otherwise address the basis of its jurisdiction over the petitioner. Accordingly, the custody order does not meet the requirements of section 101(a)(27)(J)(i) of the Act as implemented by the regulation at 8 C.F.R. § 204.11(c)(3).

Conclusion

The petitioner has also not shown by a preponderance of the evidence that his request for SIJ classification is bona fide and merits the agency's consent. Beyond the decision of the director, the petitioner failed to establish that he was the subject of a qualifying juvenile court dependency

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).



or custody order. Consequently, the petitioner does not meet subsections 101(a)(27)(J)(i) and (iii) of the Act and the appeal will be dismissed.

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

ORDER: The appeal is dismissed.