



U.S. Citizenship
and Immigration
Services

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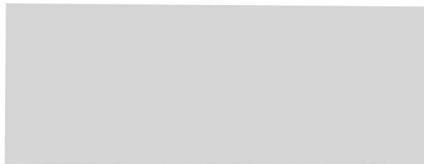
Date: **APR 30 2015**

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The [REDACTED] Texas District 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 18-year-old citizen of Mexico 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 juvenile court’s custody order, and he denied the petition accordingly. On appeal, the petitioner 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[.]

Pertinent Facts

The petitioner was born in Mexico on [REDACTED] 1997. She claims that she entered the United States on or about October 2000 without inspection. On October 8, 2007, the District Court of the [REDACTED] Judicial District in [REDACTED] County, Texas granted [REDACTED] and [REDACTED] adoption of the petitioner. *Order Nunc Pro Tunc Terminating Parental Rights and Granting Adoption of Stepchild Corrected*, Dist. Ct. of [REDACTED] Cnty., No. [REDACTED] (October 8, 2007). On December 23, 2007, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the petitioner to classify her as the child of a U.S. citizen. The Form I-130 was denied on May 19, 2009 because [REDACTED] failed to demonstrate that she had legal custody of the petitioner for a period of two years. On January 10, 2010, [REDACTED] filed a second Form I-130 on behalf of the petitioner. The Form I-130 was approved on October 18, 2010 and forwarded to the National Visa Center for immigrant visa processing. The petitioner, however, did not seek admission to the United States with an immigrant visa.

The petitioner's adoptive parents subsequently filed a petition for declaration of dependency over the petitioner with the District Court of the [REDACTED] Judicial District in [REDACTED] County, Texas (hereinafter "juvenile court"). On July 13, 2012, the juvenile court made the requisite nonviability-of-reunification and best-interest determinations and declared the petitioner dependent on the court. *Order Declaring Dependency*, Dist. Ct. of [REDACTED] Cnty., No. [REDACTED] (July 13, 2012).

The petitioner filed this Form I-360, Petition for Special Immigrant, on September 10, 2012. In response to the director's second request for evidence (RFE), the petitioner submitted a juvenile court order that granted the petitioner's adoptive parent's motion for an "order nunc pro tunc declaring dependency." The new court order consolidates the prior adoption and dependency orders. It also amends the prior determinations by no longer finding the petitioner to be a dependent on the court and applying the requisite nonviability-of-reunification and best-interest determinations to the date of the adoption hearing, September 25, 2007. *Order Nunc Pro Tunc Declaring Dependency and Consolidating Cause Nos. [REDACTED] and [REDACTED]*, Dist. Ct. of [REDACTED] Cnty., No. [REDACTED] (July 17, 2013). The director reviewed the petitioner's response to the RFEs 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 juvenile court's custody order. The petitioner responded to the NOID with a brief asserting that the director's determinations were in error. The director reviewed the petitioner's assertions and found them to be insufficient to overcome the basis of intended denial, and he denied the SIJ petition accordingly.

The AAO reviews 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 ground for denial. The appeal will remain dismissed for the following reasons.

Analysis

On July 17, 2013, the juvenile court entered an order containing the following findings:

1. [deleted]
2. As of September 25, 2007, the child had been subjected to abandonment by her biological parents as that term is used in 8 U.S.C. § 1101(a)(27)(J)(i).
3. As of September 25, 2007, reunification with the child's biological parents is not viable due to abandonment or neglect.
4. As of September 25, 2007, it is not in the child's best interest to be returned to Mexico, her country of nationality or last habitual residence.
5. As of September 25, 2007, the child has been placed under the custody of an individual appointed by a State or juvenile court located in the United States.

Order Nunc Pro Tunc Declaring Dependency and Consolidating Cause Nos. [redacted] and [redacted], Dist. Ct. of [redacted] Cnty., No. [redacted] (July 17, 2013).

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 asserts that she has made a "bona fide request for SIJ status and no 'express consent' to the approval of this petition is required." Although the TVPRA modified the two forms of consent—formerly "express" consent and "specific" consent—required for SIJ petitions, the new definition nevertheless requires the Secretary of Homeland Security, through the USCIS Field Office or District Director, to "consent[] to the grant of special immigrant juvenile status." TVPRA section 235(d)(1)(B). This consent determination "is an acknowledgement that the request for SIJ classification is bona fide." *TVPRA – SIJ Provisions Memo* at 3. This means that neither the dependency 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); *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*").

The petitioner contends that she "provided a state court order which contains findings by a state court judge that [she] complies with the exact language of the SIJ statute" and "there is no need for USCIS to review underlying family court documentation that forms the basis of the state court judge's determination." While USCIS is not the fact finder in regards to issues of child

welfare under state law,¹ the director in this case did not go behind the court's order to make his own determination regarding the petitioner's abandonment under Texas law. Instead, the director determined that USCIS consent is not warranted because the petitioner did not provide a reasonable factual basis for the court order. The petitioner bears the burden of proof to establish that her request for SIJ classification is bona fide and that she sought the juvenile court order primarily to obtain relief from parental abuse, neglect, or abandonment, rather than to gain lawful permanent residency. *Id.* 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.

Finally, the petitioner asserts that the director in the RFEs "demanded that [she] provide a document which neither she nor USCIS knows to exist" and she "provided alternative evidence to prove that she is prima facie eligible for SIJ status." In the first RFE, the director requested that the petitioner provide the petition for findings and declaratory judgment underlying the juvenile court order declaring dependency. The petitioner responded that she is unable to provide this document because there was "no petition for findings and declaratory judgment filed in the state court proceedings." However, the dependency order specifically references a petition for declaration of dependency and it states that a motion and evidence was reviewed prior to granting the order. *See Order Declaring Dependency*, Dist. Ct. of [REDACTED] Cnty., No. [REDACTED] (July 13, 2012).

In the second RFE, the director requested that the petitioner provide the petition to that underlies the adoption order. The petitioner responded that this document is not available because "the proceedings related to custody of a minor have been sealed by the state court." The petitioner instead provided the July 17, 2013 juvenile court order that consolidated the prior adoption and dependency orders. The new court order states that "[a]s of September 25, 2007, reunification with the child's biological parents is not viable due to abandonment or neglect," but it does not specify which of these two circumstances the juvenile court determined existed in the petitioner's case. The best interest determination also contains no specific factual details upon which the finding was made. *See Order Nunc Pro Tunc Declaring Dependency and Consolidating Cause Nos.* [REDACTED] and [REDACTED], Dist. Ct. of [REDACTED] Cnty., No. [REDACTED] (July 17, 2013).

The petitioner further asserts that adoption records in Texas are sealed and confidential pursuant to section 162.022 of the Texas Family Code. While we acknowledge that adoption records may be sealed, the petitioner failed to provide any other evidence to demonstrate a factual basis for the juvenile court's determinations. The original adoption decree did not make a finding of

¹ 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).

abuse, neglect or abandonment and the petitioner failed to demonstrate how the juvenile court came to its subsequent nonviability-of-reunification and best interest determinations. The record does not contain, for example, the original petition for dependency, the motion to declare dependency *nunc pro tunc* to the date of the adoption hearing, any separate findings of fact accompanying the orders, or an affidavit from the court or the individuals who retain custody over the petitioner summarizing the evidence that was presented to support the court's orders. See *SIJ Memo #3 at 5* (describing the types of evidence that USCIS may request and consider when making a consent determination). The petitioner claims that she provided "alternative evidence," but she failed to specifically identify the evidence she claims she provided as the record contains no relevant supporting evidence. The director correctly determined that the petitioner failed to provide any relevant evidence to establish a factual basis for the juvenile court's determinations. Because of this deficiency, consent to SIJ classification under section 101(a)(27)(J)(iii) of the Act is not warranted in this case.

Conclusion

The petitioner has not shown by a preponderance of the evidence that her request for SIJ classification is bona fide and merits the agency's consent. Consequently, the petitioner does not meet subsection 101(a)(27)(J)(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.