



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE:

**AUG 03 2015**

FILE #:

PETITION RECEIPT #:

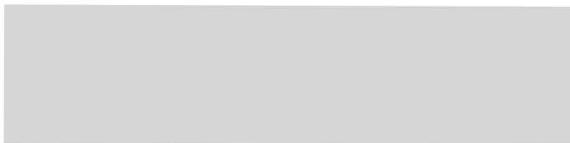
IN RE:

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:



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](http://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 Acting District Director, New York, New York (the “director”), denied the special immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on a motion to reopen and reconsider after the AAO’s dismissal of the appeal. The motion will be denied and the appeal will remain dismissed.

The petitioner is a [redacted]-year-old citizen of Ecuador 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 denied the petitioner’s request for SIJ classification because he was 21 years old at the time he filed his petition. On appeal, we affirmed the director’s decision and also found that the juvenile court order did not contain the requisite SIJ determinations. The petitioner filed a motion to reopen and reconsider.

#### *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. On December 23, 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), was enacted. *See* Pub. L. No. 110-457, 122 Stat. 5044 (2008). Section 235(d) of the TVPRA 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). *Id.*; *see also* 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* (Mar. 24, 2009) (hereinafter “*TVPRA – SIJ Provisions Memo*”). The SIJ provisions of the TVPRA are applicable to this appeal.

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 Ecuador on [REDACTED] and he entered the United States without inspection on August 19, 2011, when he was [REDACTED] years old. On April 5, 2013, the Family Court of the State of New York, County of [REDACTED] (juvenile court) granted the petitioner's brother temporary guardianship over him. The petitioner filed this Form I-360, Petition for Special Immigrant, on [REDACTED] after he turned 21 years of age. The director denied the petition. On appeal, the petitioner did not establish that he was under 21 years old at the time of filing his Form I-360. In dismissing his appeal, we also determined that, beyond the director's decision, the petitioner did not establish that he was the subject of a qualifying juvenile court dependency or custody order. We dismissed his appeal on January 29, 2015, and the petitioner submitted this motion to reopen and reconsider.<sup>1</sup>

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 new evidence submitted on motion fail to overcome the grounds for denial. The motion will be denied and our prior decision will be affirmed for the following reasons.

### *Analysis*

The director determined the petitioner was ineligible for SIJ classification because he was already 21 years of age at the time of filing. To be classified as an SIJ, an alien must be a child on the date the Form I-360 SIJ petition is filed. 8 C.F.R. § 204.11(c)(1) - (2). A child is defined as an unmarried person under the age of 21. Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). The Form I-360 SIJ petition in this proceeding was filed after the petitioner's 21<sup>st</sup> birthday. On motion, the petitioner repeats his request that U.S. Citizenship and Immigration Services (USCIS) consider his filing date "*nunc pro tunc*" as of April 9, 2013, the date that he originally attempted to file his Form I-360 SIJ petition. The petitioner argues that contrary to our previous dismissal, the Form I-360 petition submitted on April 11, 2013, was correctly signed but did not contain the correct fee. The petitioner contends that a benefit request which is not signed and submitted with the correct fee will be rejected but that in the instant case, the petition was signed but contained an incorrect fee when no fee was actually required. The petitioner further asserts

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<sup>1</sup> We dismissed the petitioner's appeal on January 29, 2015, and the petitioner submitted a second Form I-290B, Notice of Appeal or Motion, and stating that he was filing a second appeal. The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003) and subsequent amendments. While the AAO has appellate jurisdiction over Form I-360 special immigrant petitions, the AAO has no jurisdiction over the petitioner's second Form I-290B because no appeal lies from the AAO's dismissal of a prior appeal. This matter will be treated as a motion to reopen or reconsider pursuant to the regulation at 8 C.F.R. § 103.5.

that, according to 8 C.F.R. § 103.2(a)(7)(i), even if his petition was not signed, the benefit request may be rejected but does not have to be. The petitioner does not cite to, however, any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy. Nor does he show that our prior decision was erroneous based on the evidence of record at the time.

On motion, the petitioner submits an amended juvenile court order stating *nunc pro tunc*, that the petitioner consented to the appointment of temporary guardianship to his brother. Nonetheless, the juvenile court order remains deficient under subsections 101(a)(27)(J)(i), and (ii) of the Act. The plain language of the statute requires that an SIJ petitioner demonstrate that “reunification with 1 or both of the immigrant’s parents is not viable.” Section 101(a)(27)(J)(i) of the Act. The juvenile court order is dated [REDACTED] and granted the petitioner’s brother temporary guardianship for only 11 days, until [REDACTED] when the petitioner turned 21 years of age. The order did not make a determination about whether the petitioner’s reunification with his parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law, as required by section 101(a)(27)(J)(i) of the Act. Nor does the juvenile court order make a determination about whether or not it is in the petitioner’s best interest to be returned to his country of nationality or country of last habitual residence pursuant to section 101(a)(27)(J)(ii) of the Act. To obtain the immigration benefit of SIJ classification, a child must be subject to a juvenile court order which contains the non-viability and best interest determinations required by section 101(a)(27)(J) of the Act. The amended juvenile court order submitted on motion likewise grants temporary guardianship and does not contain the requisite nonviability of reunification and best interest determinations. *See* Section TVPRA 235(d)(5)(providing that a court-appointed custodian who acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility). Accordingly, the petitioner is the subject of a temporary custody order that does not contain the requisite nonviability-of-reunification determination under section 101(a)(27)(J)(i) of the Act and he is consequently ineligible for SIJ classification.

### *Conclusion*

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. 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.

**ORDER:** The motion is denied and the appeal remains dismissed.