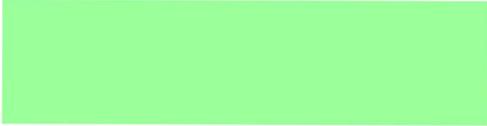


(b)(6)

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

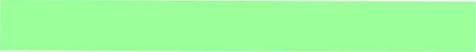


U.S. Citizenship
and Immigration
Services



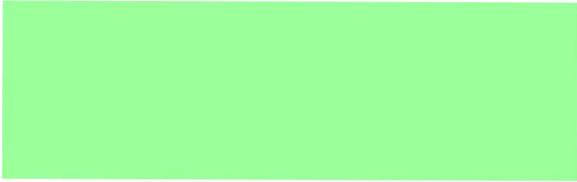
Date: **FEB 05 2015** Office: NEW YORK

FILE: 

IN RE: Self-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:



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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The New York District Director (the “director”) denied the special immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded to the director for further action.

The petitioner is a 22-year-old citizen of El Salvador 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 the juvenile court order did not make a determination about whether the petitioner’s reunification with his father 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. On appeal, the petitioner submits a brief and an amended juvenile court order.

The AAO conducts appellate review on a *de novo* basis. On appeal, the petitioner has overcome the director’s ground for denial. However, because the petition is not approvable based on the present record, the matter will be remanded to the director for further action and issuance of a new decision.

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 El Salvador on October [REDACTED] and he entered the United States without inspection on or about August 30, 2009. The petitioner was apprehended by U.S. Border Patrol on September 2, 2009 near [REDACTED] Texas. On October 1, 2009, the Office of Refugee Resettlement (ORR) released the petitioner from its custody into the care and custody of his mother who was residing in [REDACTED] New York. On September 30, 2013, the Family Court of the State of New York, [REDACTED] (hereinafter “juvenile court”) appointed the petitioner’s mother guardian of the petitioner for seven days, until he turned 21 years old, and granted her letters of guardianship. *Order Appointing Guardian of the Person*, N.Y. Fam. Ct., No. [REDACTED] (Sept. 30, 2013) and *Letters of Guardianship of the Person of a Minor*, N.Y. Fam. Ct., No. G. [REDACTED] (Sept. 30, 2013). The juvenile court contemporaneously determined that reunification of the petitioner with his father is not viable because his father is deceased and it is not in the petitioner’s best interest to return to El Salvador. *Order of Special Findings*, N.Y. Fam. Ct., No. [REDACTED] (Sept. 20, 2013).

The petitioner filed this Form I-360, Petition for Special Immigrant, on October 2, 2013. The director denied the petitioner’s request for SIJ classification because the juvenile court order did not make a determination about whether the petitioner’s reunification with his father 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. On appeal, the petitioner submits a certified copy of a May 12, 2014 order of the juvenile court specifying the non-viability of parental reunification due to abuse, neglect or abandonment applied *nunc pro tunc* to the original juvenile court order of September 30, 2013. *Amended Order – Special Immigrant Juvenile Status*, N.Y. Fam. Ct., No. [REDACTED] (May 12, 2014).

Analysis

On May 12, 2014, the juvenile court entered an order containing the following findings:

4. Reunification of the above-named child with one or both of his parents is not viable due to abuse, neglect, abandonment or a similar basis under state law, because the child’s father is deceased.
5. It is not in the best interests of the above-named child to be removed from the United States and returned to her country of origin, El Salvador, the country of nationality, or of last habitual residence of the child or his birth parents.

Amended Order - Special Immigrant Juvenile Status (May 12, 2014).

On appeal, the petitioner asserts that with the submission of this amended order he has met all of the eligibility requirements for SIJ classification under section 101(a)(27)(J) of the Act. The amended juvenile court order includes the requisite nonviability-of-reunification and best-interest determinations and the petitioner has now overcome the director's sole basis for denial. Accordingly, the director's determination shall be withdrawn.

The petition is not approvable, however, because the juvenile court order remains deficient.¹ The petitioner bears the burden of proof to establish that his request for SIJ classification is bona fide and that he sought the juvenile 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. U.S. Citizenship and Immigration Services (USCIS) examines the relevant evidence only to ensure that the record contains a reasonable factual basis for the court's order.² 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.³

Here, the juvenile court order states that one or both of the petitioner's parents subjected him to "abuse, neglect, or abandonment" because his father is deceased, but does not specify which of these three circumstances the juvenile court determined existed in the petitioner's case. The record does not contain a copy of the petitioner's father's death certificate. The best interest determination also contains no specific factual details upon which the finding was made. The record contains no evidence from the juvenile court proceedings such as, for example, the original application for guardianship, 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. The record also lacks any statements from individuals who know or have evaluated the petitioner that are relevant to the court's findings.⁴ Nor does it contain any other,

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 director 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

² *See USCIS Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, 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 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11).

⁴ Adjudicators may request the records of the juvenile court proceedings or, where such records are confidential and unavailable, an affidavit from the court, or the state entity or the individual who retains custody over the child, summarizing the evidence that was presented to support the court's order. *See USCIS Memorandum No. 3 - Field Guidance on Special Immigrant Juvenile Status Petitions*, 5 (May 25, 2004). Evidence may also include affidavits, letters, evaluations or treatment plans from individuals who

relevant supporting evidence to establish a factual basis for the juvenile court's determinations. Because of these deficiencies, consent to SIJ classification under section 101(a)(27)(J)(iii) of the Act cannot be determined at this time based upon the current record.

The director's April 15, 2014 decision denying the petitioner's request for SIJ classification was based solely on the determination that the juvenile court order did not make a determination about whether the petitioner's reunification with his father is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. The sole ground for denial has now been overcome, but the petitioner remains ineligible for SIJ classification because the record lacks evidence of the facts supporting that order. Because the director did not address this deficiency in her decision, the matter must be remanded to the director for further action such as issuance of a Request for Evidence (RFE) to provide the petitioner with the opportunity to address the remaining deficiencies of record.

Conclusion

In this case, as in all visa petition 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). Although the petitioner has overcome the director's ground for denial, he remains ineligible for SIJ classification on other grounds. Accordingly, the director's decision will be withdrawn and the matter will be remanded to the director for further action in accordance with the preceding discussion. The director shall then issue a new decision, which shall be certified to the AAO if adverse to the petitioner.

ORDER: The April 15, 2014 decision of the New York District Director is withdrawn. The petition is remanded to that office for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.

know or have worked with the petitioner such as, but not limited to, social workers, health care professionals, guardians, family members and friends. See 76 Fed. Reg. at 54981 (describing the types of evidence that USCIS may request and consider when making a consent determination).