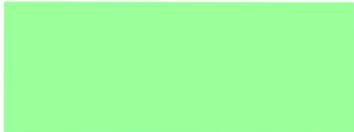


(b)(6)

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

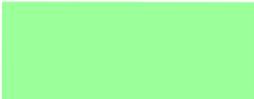


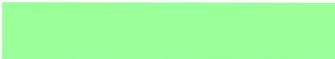
U.S. Citizenship
and Immigration
Services



Date: FEB 05 2015

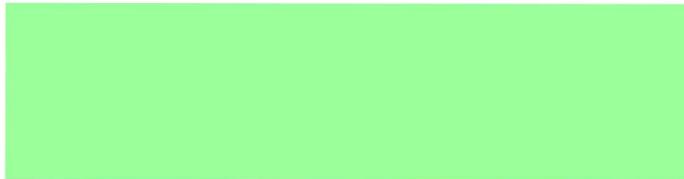
Office: RENO, NEVADA

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. 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a horizontal line.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Reno, Nevada (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.

The petitioner 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 failed at the time of filing to provide documentary evidence of his age and a juvenile court order. On appeal, the petitioner submits 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 filed the instant Form I-360, Petition for Special Immigrant, on December 11, 2013. He stated on the Form I-360 SIJ petition that his country of birth is “Mexico as alleged” and his date of birth is December [REDACTED]. He indicated that he entered the United States in

December 1992, but did not provide his manner of entry. The petitioner provided a birth record from a hospital located in [REDACTED] Mexico as evidence of his identity. On February [REDACTED] when the petitioner was 21 years old, the Family Division of the Second Judicial District Court of the State of Nevada, [REDACTED] (hereinafter “family court”) in adult guardianship proceedings made the requisite non-viability of reunification and best interest determinations and found that the petitioner “*is an adult who is in need of the appointment of a permanent guardian.*” The family court appointed [REDACTED] as the petitioner’s permanent guardian and applied the order *nunc pro tunc* to January 21, 2014. *Order Appointing Permanent Guardian of the Person*, 2nd Jud. Dist. Ct. of Nev., No. [REDACTED] (February 7, 2014). The director denied the petitioner’s request for SIJ classification because he failed at the time of filing to provide documentary evidence of his age and a juvenile court order. The petitioner timely appealed.

The AAO reviews these proceedings *de novo*. A full review of the record fails to establish the petitioner’s eligibility. The petitioner’s claims and additional evidence submitted on appeal do not overcome the director’s ground for denial. The appeal will remain dismissed for the following reasons.

Analysis

At the outset, we acknowledge that this case has several sympathetic factors that the petitioner, through his counsel, has presented on appeal. The petitioner, through counsel, asserts that he was born with developmental disabilities including cerebral palsy and limited cognitive function. He states that he has lived his entire life in the United States and his sole caretaker is an elderly man who has limited resources. He states that after he turns 22 years old he will no longer be eligible for benefits through his school district which is his only source of activity and midday food. He submits a letter from his physician, Dr. [REDACTED] who confirms the diagnosis of cerebral palsy and opines that the petitioner will remain severely physically handicapped and unable to care for himself without assistance. While we recognize the petitioner’s unique situation and unfortunate circumstances, SIJ classification is not a purely discretionary finding. The director correctly determined that the petitioner failed to establish his statutory eligibility for approval of the petition.

The Petitioner’s Age

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). Initial documentary evidence of the SIJ petitioner’s age includes a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the petitioner’s age. 8 C.F.R. § 204.11(d)(1). The U.S. Department of State’s reciprocity schedule for Mexico provides that:

Birth Certificates (acta de nacimiento) are generally available since 1870, although in many municipalities the records prior to 1915 have been partially or totally destroyed. A letter may be obtained certifying that no record is available, except in the Federal District

where civil registry officials decline to issue such negative statements to individuals. Birth certificates are issued by the appropriate Official del Registro Civil (official of the Civil Registry), and, in the Federal District, by the Jefe de la Oficina del Registro Civil del Distrito Federal (Chief of the Office of the Federal District) in whose archives are consolidated the records of subordinate civil registries of the Federal District. . . .

Civil registries receive delayed birth registrations, based upon the testimony of witnesses. If of recent date, and especially if long delayed, these may be open to question. Baptismal certificates (fe de bautismo) issued by religious authorities are not considered by the Mexican government to be official documents. In cases in which the delay of a birth record raises serious questions regarding identity, however, baptism certificates may be offered as secondary evidence. The most reliable baptism record is a photocopy of the entire page of the baptism book issued under the seal of the parish where the baptism in question is recorded.¹

The petitioner initially submitted a certified translation of a birth certificate from [REDACTED] located in [REDACTED] Mexico, which provides that he was born at the hospital on December [REDACTED]. The director found this document to be insufficient evidence of the petitioner's age. On appeal, the petitioner attests in a sworn statement that the only record of his birth is a hospital birth record issued by [REDACTED] and his birth was not registered with Mexican civil registry authorities or with the vital records section in the United States. *Individual's Affidavit of Birth*, dated March 20, 2014.

Regulatory guidance regarding the submission of evidence is provided at 8 C.F.R. § 103.2(b)(2), which states, in pertinent parts, that:

(i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. . . . Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) Demonstrating that a record is not available. Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. . . . where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

¹<http://travel.state.gov/content/visas/english/fees/reciprocity-by-country/MX.html#birthcertificates-0> (accessed January 27, 2015).

Here, the petitioner provided secondary evidence in the form of a record of his birth from a hospital in Mexico. However, he failed to demonstrate that primary evidence of his birth, the *acta de nacimiento*, does not exist with the civil registry in Mexico. He has not provided a letter of no record from local or state government officials in Mexico. Nor does he or his counsel attest to attempting to obtain such a document. See *Individual's Affidavit of Birth*, dated March 20, 2014. As the petitioner has failed to demonstrate that primary evidence of his birth is unavailable we cannot find that secondary evidence of his birth in the form of a hospital birth record establishes his age. The petitioner has therefore failed to provide probative documentation of his age, as required by 8 C.F.R. § 204.11(d)(1).

Juvenile Court Order

The director also determined that the petitioner failed to submit a juvenile court order with the initial filing of his Form I-360 SIJ petition on December 11, 2013, as required by 8 C.F.R. § 204.11(d)(2). See also 8 C.F.R. § 103.2(b)(Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions). The family court custody order is dated almost two months after the Form I-360 SIJ petition was filed and the order was applied *nunc pro tunc* to January 21, 2014, one month after the petitioner filed the petition. See *Order Appointing Permanent Guardian of the Person* (February 7, 2014). The director stated that the petitioner did not submit the custody order until the date of his interview at the field office on March 12, 2014. The petitioner therefore did not submit initial evidence to establish that he was eligible for SIJ classification at the time of filing the Form I-360 petition. See 8 C.F.R. 103.2(b)(An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing).

Beyond the decision of the director, even if the petitioner filed the family court order as initial evidence, he would still be ineligible for SIJ classification because he failed to demonstrate that he is or was the subject of a qualifying juvenile court dependency or custody order.² On the appeal notice, the petitioner, through counsel, asserts that he is aware of no law or policy that requires a custody order to be issued before the petitioner attains 21 years of age. However, the statute requires that the petitioner demonstrate that he is the subject of state juvenile court proceedings, which generally do not have jurisdiction over individuals who are 21 years of age or older. See Section 101(a)(27)(J)(i) of the Act.³ Individual state laws may define a child as a person less than 21 years of age for purposes of state juvenile court proceedings and jurisdiction. In this case, Nevada defines a minor as an individual under the age of 18. Nev. Rev. Stat. Ann. § 159.023 (West 2014). Nevada juvenile courts may retain jurisdiction over an individual who is

² 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).

³ As long as an SIJ petition is filed before the child turns 21, the petitioner will not “age out” and the petition may not later be denied on the basis of the petitioner’s age. Section 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457 (Dec. 23, 2008).

19 years old, but only if the court initially obtained jurisdiction over the child before his or her 18th birthday and the child is in high school. Nev. Rev. Stat. Ann. § 159.191 (West 2014).

At the time the guardianship proceedings over the petitioner commenced, he was already 21 years of age and the family court considered him an “adult ward” during its proceedings. See *Order Appointing Permanent Guardian of the Person* (February 7, 2014). The petitioner therefore was not subject to juvenile court proceedings. On appeal, the petitioner submits an amended order for the appointment of guardianship applied *nunc pro tunc* to December 10, 2013. *Amended Order Appointing Permanent Guardian of the Person*, 2nd Jud. Dist. Ct. of Nev., No. [REDACTED] (April 24, 2014). Assuming arguendo that the petitioner’s birthday is December [REDACTED] and the amended guardianship order was therefore issued when he was 20 years of age, he was still not in juvenile court proceedings pursuant to Nevada statutes, which defines a minor as an individual under 18 years of age. See Nev. Rev. Stat. Ann. § 159.023 (West 2014). The amended court order also indicates that the guardianship proceedings are over an “adult ward.” See *Amended Order Appointing Permanent Guardian of the Person* (April 24, 2014). The petitioner has therefore failed to demonstrate that he was ever subject to a juvenile court dependency or custody order, as required by section 101(a)(27)(J)(i) of the Act.

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 appeal is dismissed.