U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: FEB 10 2015 Office: NEWARK, NEW JERSEY 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Newark, New Jersey 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.

The petitioner is a year-old citizen of El Salvador who seeks classification as a special immigrant juvenile (SIJ) as defined at section 101(a)(27)(J) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(27)(J), and pursuant to section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4). The director denied the petition based on her determination that the petitioner failed to establish that he is subject to a qualifying juvenile court order which contains the requisite nonviability-of-reunification determination and that his request for SIJ classification is bona fide and merits the agency's consent. On appeal, counsel submits a brief and additional evidence.

Applicable Law

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles, defined in section 101(a)(27)(J) of the Act 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 record reflects that the petitioner was born in El Salvador on He claims on the Form I-360 SIJ petition that he entered the United States in May 2007, but does not indicate

his manner of entry. On June 20, , when the petitioner was 20 years old, the Superior Court of New Jersey Chancery Division – Family Part, (hereinafter "family court") granted his mother sole custody over the petitioner. *Custody Order*, N.J. Super. Ct. Ch. Div., No.). The petitioner filed the instant Form I-360 on August 15, . The director denied the petition and the petitioner timely appealed.

We review 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 grounds for denial. The appeal will remain dismissed for the following reasons.

Analysis

Qualifying Juvenile Court Dependency or Custody Order

The director correctly determined that the petitioner failed to demonstrate that he is or was the subject of a qualifying juvenile court dependency or custody order because he was 20 years old at the time the order was filed. On appeal, the petitioner asserts that he is dependent upon the family court by virtue of the court's jurisdiction. 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).

In this case, the record lacks any evidence that the custody order was issued pursuant to the court's jurisdiction over the petitioner as a juvenile. Section 9:17B-3 of the New Jersey statutes provides that "every person 18 or more years of age shall in all other matters and for all other purposes be deemed to be an adult." N.J. Stat. Ann. § 9:17B-3 (West 2014). The petitioner was at the time of the custody proceedings twenty years old and, therefore, an adult under New Jersey law. Consequently the Superior Court of New Jersey Chancery Division – Family Part did not have jurisdiction over the petitioner as a juvenile. New Jersey law recognizes exceptions for dependent and neglected children between the ages of 18 and 21. *See* N.J. Stat. Ann. § 9:17B-3 (West 2014). However, although the court's order references the petitioner as "[t]he minor child in question . . . ," the court did not expressly find the petitioner to be dependent or neglected, and the order does not address the basis of the court's jurisdiction over the petitioner as he was an adult under New Jersey law at the time of the order's issuance. 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).

Even if the custody order was from a juvenile court proceeding, the director correctly determined that the petitioner would not be eligible for SIJ classification because the court order does not

make the non-viability of reunification determination, as required by section 101(a)(27)(J)(i) of the Act.

On appeal, the petitioner submits: a letter from a psychologist in El Salvador, stating that the petitioner, his mother and his brother are survivors of domestic violence perpetrated by the petitioner's father and she provided them treatment in the year 2006; and a copy of his father's death certificate showing his date of death as September . The petitioner asserts that family reunification is not a viable option because his father is deceased, the death of his parent constitutes abandonment, and his mother did not protect him from his father's abuse. U.S. Citizenship and Immigration Services (USCIS) is not the fact finder in regards to these issues of child welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. *See* Sections 101(a)(27)(J)(i)-(ii) of the Act (referencing the determinations of a juvenile court or other administrative or judicial body).

The family court determined that the petitioner's father was abusive towards him, but "the abusive parent has been deceased for 8 years, and, the child and mother continued to reside in El Salvador after his death for 3 years, and therefore, the Court finds there is no present threat related to the abusive parent from which to protect him." *Custody Order*, N.J. Super. Ct. Ch. Div., No. The court noted, "were the natural father still living, the record would be sufficient to find the non-viability of reunification with one or both parents." *Id.* It is clear from the language of the order that the court expressly declined to make a determination of the non-viability of reunification with one or both parents because of the petitioner's present circumstances. As such, the order is deficient because it fails to comply with section 101(a)(27)(J)(i) of the Act.

Consent

Finally, the director determined that even if the petitioner had a qualifying juvenile court custody order, his request for SIJ classification would not be bona fide because his primary purpose in seeking the custody order was to secure immigration status rather than seek relief from abuse, neglect or abandonment.

On appeal, the petitioner asserts that unless a child is in the actual or constructive care of the Secretary of the Department of Homeland Security, it is not necessary to obtain the Secretary's consent prior to obtaining a juvenile court's determination for SIJ purposes. The petitioner's assertions regarding consent are misguided. The petitioner is referring to "specific consent," which is a requirement that certain juveniles in federal custody of the Department of Health and Human Services (HHS) obtain specific consent from HHS to juvenile court jurisdiction where the juvenile court order determines or alters the juvenile's custody status or placement. Section 101(a)(27)(J)(iii)(I) of the Act; 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) at 3.

The director in this case made a statutory eligibility determination under section 101(a)(27)(J)(iii) of the Act, which applies to all SIJ petitioners and requires the Secretary of

Homeland Security, through USCIS, to "consent[] to the grant of special immigrant juvenile status." This consent determination is "an acknowledgement that the request for SIJ classification is bona fide." 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. The petitioner bears the burden of proof to establish that neither the nonviability-of-reunification 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 [or abandonment.]" H.R. Rep. No. 105-405 at 130 (1997). Approval of an SIJ petition is evidence of the Secretary's consent. *See* 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) at 3.

Here, the family court specifically declined to make a nonviability-of-reunification determination. *See Custody Order*, N.J. Super. Ct. Ch. Div., No. (stating that, "the abusive parent has been deceased for 8 years, and, the child and mother continued to reside in El Salvador after his death for 3 years, and therefore, the Court finds there is no present threat related to the abusive parent from which to protect him."). Although the family court found that it was not in the petitioner's best interest to return to El Salvador, the court order contains no specific factual details upon which the finding was made. Nor does the record contain any other, relevant supporting evidence for the best-interest determination. Consequently, consent to SIJ classification under section 101(a)(27)(J)(iii) of the Act is not warranted in this case.

Conclusion

The petitioner failed to establish that he was the subject of a qualifying juvenile court dependency or custody order. He 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. 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 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.