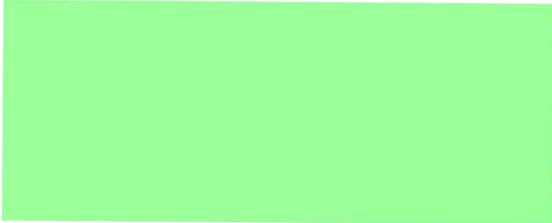




U.S. Citizenship  
and Immigration  
Services

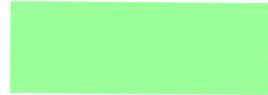
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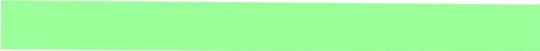
DATE: JAN 29 2015

Office: NEWARK, NJ

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Newark, New Jersey, denied the special immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted and the appeal will be sustained.

The petitioner is a 19-year-old native and 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).

*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 and Procedural History*

The petitioner was born in Ecuador on March [REDACTED]. In her November 16, 2009 affidavit, the petitioner recounted that she first came to the United States when she was two years old with her parents, two brothers and sister. Eleven years later, the petitioner stated that her father returned to Ecuador for work and she and her mother followed in December 2005, shortly after which her parents separated and she lost contact with her father. The petitioner recalled that her mother

worked long hours and she spent a lot of time by herself. When her mother obtained a job that required her to work at different locations, the petitioner would go with her or stay with a friend. The petitioner explained that she wanted to return to the United States because there was too much poverty in Ecuador, she and her mother argued and she wanted to finish school and attend college in the United States.

The petitioner entered the United States on July 23, 2009 as a nonimmigrant visitor (B2), resided with her sister and enrolled in school. In December 2009, the petitioner's brother filed a petition for custody of the petitioner with the Superior Court of New Jersey, ██████████ County, Chancery Division, Family Part (juvenile court). In his December 14, 2009 affidavit in support of the custody petition, the petitioner's brother stated that he was a lawful permanent resident of the United States and that when the petitioner returned to Ecuador with their mother, their mother worked long hours, did not have time to see the petitioner and the petitioner often changed schools due to their mother's employment. The petitioner's brother reported that he had been financially supporting the petitioner ever since she came back to the United States in July 2009 and that he would continue to support her because their mother was unable to provide her with adequate care in Ecuador.

On April 21, 2010, the juvenile court entered an order awarding custody of the petitioner to her brother and determining that: the petitioner had been abandoned and/or neglected by her natural parents; reunification with her parents was not viable due to neglect and abandonment, or a similar basis under section 9:6-1 of the New Jersey Statutes;<sup>1</sup> that it was not in the petitioner's best interests to return to Ecuador; and that it was in her best interest to remain in the United States.

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<sup>1</sup> Title 9, Chapter 6, Article 1 of the New Jersey Statutes Annotated (West 2011) states, in pertinent part:

Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child: (a) willfully forsaking a child; (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

\* \* \*

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

The petitioner filed the instant Form I-360 SIJ petition on May 31, 2010 when she was 18 years old. The director denied the petition after reviewing counsel's response to a Notice of Intent to Deny (NOID) and counsel timely appealed. The director determined that the petitioner's request for SIJ classification was not bona fide because the record indicated that the petitioner sought the juvenile court order primarily for the purpose of obtaining lawful permanent residency in the United States, rather than gaining relief from parental abuse, neglect, abandonment, or a similar basis under state law.

On appeal, prior counsel reasserted the petitioner's eligibility and claimed the director's decision was based on an erroneous interpretation of the facts, but submitted no supporting brief or additional evidence. Finding prior counsel's claims insufficient to overcome the director's ground for denial, we dismissed the appeal. On motion, present counsel submits a full legal brief, an additional affidavit from the petitioner disclosing new facts and relevant correspondence. Counsel's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Upon de novo review of the record as supplemented on motion, counsel's claims and the relevant evidence establish the petitioner's eligibility and the appeal will be sustained.

#### *Analysis*

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to "consent[] to the grant of special immigrant juvenile status." 8 U.S.C. § 1101(a)(27)(J)(iii). This consent determination "is an acknowledgement that the request for SIJ classification is bona fide,"<sup>2</sup> meaning 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 or abandonment." H.R. Rep. No. 105-405, at 130 (1997). In this case, the director determined that the petitioner's request for SIJ classification was not bona fide because at an interview with a USCIS officer on August 18, 2010, the petitioner initially stated that she was living amicably with her mother in Ecuador until her mother suggested that she return to the United States to live with her older brother and sister. The director concluded that the petitioner sought the juvenile court order primarily to obtain lawful permanent residency in the United States rather than to gain relief from her parents' abuse, neglect or abandonment. We affirmed the director's decision on appeal.

In her September 9, 2013 affidavit submitted on motion, the petitioner discloses new facts regarding her reasons for seeking the juvenile court order. The petitioner credibly recounts how she was sexually assaulted by a relative in Ecuador while her mother was in another part of the country for work. The petitioner explains that she did not disclose the incident to her family given the history and culture of blaming other female relatives who had been similarly assaulted in the past, but that she left Ecuador as soon as she could afterwards. Enduring feelings of shame and a wish to protect her brother also kept the petitioner from disclosing the incident to him, her

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<sup>2</sup> 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*, p. 3 (Mar. 24, 2009).

prior attorneys and during her interview at the Newark Field Office where she was accompanied by her brother. Both the petitioner and present counsel explain that it was not until they were able to speak at length about what had happened in Ecuador that the petitioner felt able to disclose her experience.

On motion, counsel also submits correspondence with the Newark Field Office further explaining that the petitioner was both unrepresented by prior counsel at her immigration interview and was inhibited from fully disclosing all her reasons for leaving Ecuador at the interview because she was accompanied by her elder brother.

*De novo* review of the supplemented record reveals that the petitioner sought the juvenile court order primarily to obtain relief from parental neglect and abandonment. Given her new disclosure, the petitioner's statements regarding her disputes with her mother and her mother's arrangements for her to reunite with her brother in the United States are not inconsistent with the juvenile court's determination of parental neglect and abandonment. The juvenile court order in this case contains the requisite findings of custody, non-viability of parental reunification due to neglect and abandonment and that return to Ecuador would not be in the petitioner's best interest. The record also contains a reasonable factual basis for the court order. Consequently, our prior decision will be withdrawn.

Upon *de novo* review on reopening, the preponderance of the evidence shows that the petitioner's request for SIJ classification is bona fide and merits the agency's consent under section 101(a)(27)(J)(iii) of the Act.

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 now been met. Accordingly, the appeal will be sustained.

The director denied the petitioner's concurrently filed Form I-485, Application to Adjust Status, based solely on the denial of her Form I-360 SIJ petition. As the sole ground for denial of the petitioner's Form I-485 has now been overcome, we will return the matter to the director for reconsideration of the petitioner's adjustment application.

**ORDER:** The motion is granted. The November 2, 2011 decision of the Administrative Appeals Office is withdrawn and the appeal is sustained. The matter is returned to the director for further action.