



U.S. Citizenship
and Immigration
Services

(b)(6)



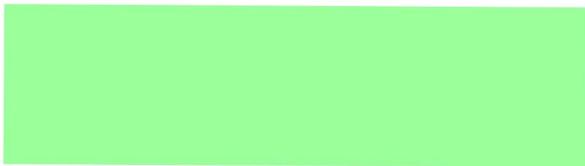
Date: **JAN 29 2015** Office: NEW YORK, NY

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 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 appeal. The appeal will be dismissed.

The petitioner is a 22-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, the petitioner submits a brief.

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 Ecuador on April [REDACTED] and he entered the United States without inspection on August 19, 2011 when he was 19 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 May 13, 2013, after he turned 21 years of age. The director denied the petition and 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 brief submitted on appeal does not overcome the director's ground for denial. The appeal will remain dismissed for the following reasons.

Analysis

Age Out Determination

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 21st birthday. On appeal, the petitioner requests 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 to remedy an agency error. However, the record does not reflect that any agency error was made in rejecting the petitioner's Form I-360. USCIS records show that the petitioner first attempted to file a Form I-360 petition on April 11, 2013, but the form was rejected because it was not signed and had an incorrect fee. The petitioner resubmitted his Form I-360 petition after his 21st birthday on April 25, 2013 and that form was rejected again because it was not signed. The regulations mandate that a benefit request which is not signed and submitted with the correct fee will be rejected. A rejected benefit request will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(iii). The petitioner did not properly file his Form I-360 SIJ petition until May 13, 2013, almost one month after his 21st birthday. The director therefore correctly determined that the petitioner is ineligible for SIJ classification because he was not a child on the date that the Form I-360 SIJ petition was filed, as required by 8 C.F.R. § 204.11(c)(1) - (2).

Viability of Reunification and Best Interest Determinations

Even if the petitioner had filed the Form I-360 prior to his 21st birthday, he would still not be eligible for SIJ classification because the juvenile court order is deficient under subsections 101(a)(27)(J)(i),(ii) of the Act.¹ The juvenile court order is dated April 5, 2013 and granted the petitioner's brother temporary guardianship for only 11 days, until April [REDACTED] when the petitioner turned 21 years of age. The juvenile court order does 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

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).

the Act. As such, it does not contain the requisite nonviability of reunification determination. 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. Nothing in the record shows that the juvenile court or any other judicial or administrative entity determined that it would not be in the petitioner's best interest to return to Ecuador. 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. Here, the relevant evidence fails to demonstrate that the petitioner was the subject of a qualifying juvenile court dependency or custody order. Consequently, the petitioner does not meet the requirements of subsections 101(a)(27)(J)(i),(ii) of the Act and is ineligible for SIJ classification on these additional grounds.

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.