



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 09 2015**

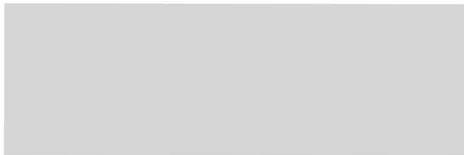
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Charlotte, North Carolina Field Office Director (the director) denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a [REDACTED] year-old citizen of Honduras 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 petition because the juvenile court's temporary custody order does not make a permanent finding of nonviability of reunification with the petitioner's father, and he denied the petition accordingly. On appeal, the petitioner asserts that the evidence submitted below established his eligibility.

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. *See* 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[.]

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through a U.S. Citizenship and Immigration Services (USCIS) Field Office Director, 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,” meaning that neither the custody order nor the best interest determination were “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.” See 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*, at 2 (May 27, 2004)(quoting H.R. Rep. No. 105-405 at 130 (1997)).

Pertinent Facts

The record reflects that the petitioner was born in Honduras on [REDACTED]. The petitioner entered the United States on or about [REDACTED], 2013, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol agents at the time of his entry near [REDACTED] Arizona, was issued a Notice to Appear in removal proceedings, and was taken into custody of the Office of Refugee Resettlement (ORR). On [REDACTED] 2013, the petitioner was released from ORR custody to his aunt, [REDACTED]. On [REDACTED] 2013, the General Court of Justice District Court Division, [REDACTED] (hereinafter “juvenile court”) granted an ex parte temporary custody order to the petitioner’s aunt, Ms. [REDACTED]. See *Order Granting Ex Parte Custody*, Dist. Ct. Div., [REDACTED], 2013).

The petitioner filed this Form I-360, Petition for Special Immigrant, on October 23, 2013, based on the juvenile court’s findings of fact. The director subsequently issued a notice of intent to deny (NOID) the Form I-360 SIJ petition because at the time of filing the petition, the petitioner was not subject to a valid court dependency order. The petitioner responded to the NOID with a brief which the director found insufficient to overcome the intended basis of denial. The director denied the Form I-360 petition and the petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record does not establish the petitioner’s eligibility. The petitioner’s assertions on appeal do not overcome the director’s grounds for denial. The director’s decision will be affirmed for the following reasons.

Analysis

The director determined that the petitioner did not demonstrate that he is or was the subject of a qualifying juvenile court dependency or custody order because the ex parte custody order only made a temporary finding that reunification with the petitioner’s parents was not viable.¹ On

¹ To the extent that the director denied the petition because the “age out” protection of the TVPRA does not apply to petitioner who aged out of the juvenile court jurisdiction prior to filing for SIJ classification, that portion of the decision is withdrawn. A petitioner must establish that he continues to have a valid juvenile court order that has not been vacated, terminated, or otherwise ended. 8 C.F.R. § 204.11(c)(5). However, USCIS will not deny, revoke, or terminate a SIJ petition or an SIJ-based adjustment of status

appeal, the petitioner asserts that the regulations at 8 CFR section 204.11(c) pursuant to the Immigration and Nationality Act, do not require that the juvenile court order be permanent.

The plain language of the statute requires that an SIJ petitioner demonstrate that “reunification with 1 or both of the immigrant’s parents is not viable.” Section 101(a)(27)(J)(i) of the Act. Here, the juvenile court awarded the petitioner’s aunt the “temporary care, custody, and control” of the petitioner subject to another hearing. *See Order Granting Ex Parte Custody*, Dist. Ct. Div., [REDACTED] 2013). The juvenile court’s finding of nonviability-of-reunification with the petitioner’s parents was issued on a temporary basis, subject to a redetermination hearing that did not occur because the petitioner aged out and the court did not retain jurisdiction over the petitioner. This temporary determination does not establish that “family reunification is no longer a viable option” because the petitioner has not shown that the court ultimately granted permanent custody to the petitioner’s mother. *See* Section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (providing that a court-appointed custodian who acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility).

The petitioner contends that even if the ex parte order was temporary, the North Carolina Court of Appeals has held under *LaValley v. LaValley*, 564 S.E.2d 913 (N.C. App. Ct. 2002) that an unappealed temporary custody order converts into a permanent order at “some point in time.” An order is temporary in North Carolina “if either (1) it states a clear and specific reconvening time in the order and the time interval between the two hearings was reasonably brief; or (2) the order does not determine all issues.” *See Lamond v. Mahoney*, 583 S.E.2d 656, 659 (N.C. App. Ct. 2003)(citing *Brewer v. Brewer*, 533 S.E.2d 541, 546 (N.C. App. Ct. 2000)). In *LaValley* the Court of Appeals stated that “[a] temporary order is not designed to remain in effect for extensive periods of time or indefinitely . . . and must necessarily convert into a final order if a hearing is not set within a reasonable time.” *See* 564 S.E.2d 913, 915 n.5. The Court emphasized that “[w]e are careful to use the words ‘set for hearing’ rather than ‘heard’ because we are aware of the crowded court calendars in many of the counties of this State.” *Id.* In this case, the juvenile court set a hearing date on the same day it issued the temporary custody order and the time interval between the two hearings was approximately two weeks.

The petitioner also asserts that the juvenile court order was premised on a civil order for purposes of North Carolina statute 7B-11 which provides that “the court shall determine whether or not jurisdiction in the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and 50-13.7.” *See* N.C. Gen. Stat. Ann. §7B-11 (West 2015)(Sections 50-13.1, 50-13.2, 50-13.5, and 50-13.7 pertain to child custody and support issues in divorce and alimony proceedings). Here, the juvenile court granted an ex parte temporary custody order to the petitioner’s aunt pursuant to

application (Form I-485) if, at the time of filing the SIJ petition: (1) the petitioner is or was under 21 years of age, unmarried, and otherwise eligible; and (2) the petitioner either is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing. *Stipulation, Perez-Olano, et al. v. Holder, et. al*, Case No. CV 05-3604 (C.D. Cal. 2005)(No. 176).

sections 50A-204(a) and 50A-311 of North Carolina statutes which allow for temporary jurisdiction by the juvenile court over minors who have been abandoned, neglected, or abused. *See* N.C. Gen. Stat. Ann. §§ 50A-204(a) and 50A-311 (West 2015). The petitioner did not submit evidence that section 7B-11 applies to the instant proceedings. Further, the director did not deny the SIJ petition because the petitioner “aged out” of the juvenile court’s jurisdiction after he turned eighteen years of age. *See* N.C. Gen. Stat. Ann. § 48A-2 (West 2015)(defining a minor as “any person who has not reach the age of 18 years.”). The director instead denied the petition because the juvenile court order does not contain the requisite nonviability-of-reunification determination and therefore is deficient under section 101(a)(27)(J)(i) of the Act. Accordingly, the petitioner is the subject of a temporary custody order that does not contain the requisite nonviability-of-reunification determination under section 101(a)(27)(J)(i) of the Act.

Conclusion

The petitioner did not establish that he was the subject of a qualifying juvenile court custody order. Consequently, the petitioner does not meet section 101(a)(27)(J)(i) of the Act and the petition will remain denied.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also 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.