



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 29 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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Lawrence, Massachusetts Field Office Director (the director) denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded to the director for further action.

The petitioner is a 19-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 petition for not demonstrating that a juvenile court dependency or custody order for the petitioner was in effect at the time of filing his petition for SIJ classification. On appeal, the petitioner has overcome the director's ground for denial. However, because the petition is not approvable based on the present record, the matter will be remanded to the director for further action and issuance of a new decision.

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 Ecuador on [REDACTED]. The petitioner entered the United States on or about April 13, 2013, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol agents at the time of his entry near [REDACTED] Texas, was issued a Notice to Appear in removal proceedings, and was taken into custody of the Office of Refugee Resettlement (ORR). The petitioner was subsequently released from ORR custody to his father, [REDACTED]. On [REDACTED] 2014, the Trial Court, Probate and Family Court Department, [REDACTED] (hereinafter “juvenile court”) granted guardianship to the petitioner’s guardian, [REDACTED] when the petitioner was seventeen years old. *See Order Granting on Motion for Special Findings of Fact and Rulings of Law*, Trial Ct. Prob. and Fam. Ct. Dep’t., [REDACTED].

The petitioner filed this Form I-360, Petition for Special Immigrant, on April 7, 2014, when he was over the age of eighteen but under the age of twenty-one, based on the juvenile court’s findings of fact. The director subsequently issued a Notice of Intent to Deny (NOID) the petition because at the time of filing the petition, the petitioner had aged out of the juvenile court’s jurisdiction under Massachusetts law. The petitioner responded to the RFEs with a brief and additional evidence, which the director found insufficient and denied the Form I-360 petition. The petitioner appealed.

Analysis

The director denied the SIJ petition because the petitioner “aged out” of the juvenile court’s jurisdiction after he turned eighteen years of age. *See* Mass. Gen. Law 190B § 1-201 (West 2015)(defining a minor as “a person who is under 18 years of age.”). The director determined that the petitioner was not the subject of a valid juvenile court order because the juvenile court’s guardianship order was temporary and also terminated by operation of law by the time the petitioner filed his Form I-360 petition. 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 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).

Here, the juvenile court entered a Motion for Special Findings of Fact and Rulings of Law, Decree and Order of Appointment of Guardian of a Minor, and an order regarding the minor's eligibility for special immigrant juvenile status on January 29, 2014, when the petitioner was seventeen years old. This evidence does not state, and the record does not otherwise demonstrate, that the juvenile court order granting guardianship to Ms. [REDACTED] was on a temporary basis. Instead, the order explicitly states that the guardianship will end on the petitioner's 18th birthday when he is no longer a minor. As the petitioner was the subject of a valid dependency order that was terminated on age when he turned 18 years old, he is not precluded from eligibility for special immigrant classification. Consequently, the director's contrary determination shall be withdrawn.

The petition is not approvable, however, because the juvenile court order is deficient.¹ The juvenile court order and supporting court documents found that the petitioner's reunification with his parents was not viable due to abandonment and neglect. Our review of the record demonstrates, however, that ORR released custody of the petitioner to his father. The order does not specify on which ground reunification with his father is not viable and does not state any facts upon which this determination was based. The order further states it is in the petitioner's best interest to remain in the United States, but does not state a reason for that determination. The present record still lacks sufficient evidence providing a reasonable factual basis for the court's determinations and to warrant the agency's consent to the petitioner's request for SIJ classification, as required by section 101(a)(27)(J)(iii) of the Act

The director's June 16, 2014, decision denying the petitioner's request for SIJ classification was based solely on the determination that the petitioner did not demonstrate that a juvenile court dependency or custody order for the petitioner was in effect at the time of filing his petition for SIJ classification. The sole ground for denial has now been overcome, but the petitioner remains ineligible for SIJ classification because the juvenile court order dated January 29, 2014, is deficient and the present record lacks sufficient evidence providing a reasonable factual basis for the court's determinations. As the director did not address this deficiency in his decision, the matter must be remanded to the director for further action such as issuance of a Request for Evidence (RFE) to provide the petitioner with the opportunity to address the remaining deficiencies of record.

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 Service Center 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).



Conclusion

In this case, as in all visa petition 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). Although the petitioner has overcome the director's ground for denial, he remains ineligible for SIJ classification on other grounds. Accordingly, the director's decision will be withdrawn and the matter will be remanded to the director for further action in accordance with the preceding discussion. The director shall then issue a new decision, which shall be certified to the AAO if adverse to the petitioner.

ORDER: The June 16, 2014, decision of the  Massachusetts Field Office is withdrawn. The petition is remanded to that office for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.