



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 31 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Bloomington, Minnesota 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 21-year-old citizen of Mexico 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 determined that the petitioner did not establish that he is eligible for SIJ classification which requires that he be declared a dependent upon a juvenile court located in the United States in accordance with state law. On appeal, the petitioner submits a brief and evidence reasserting the petitioner's 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 Mexico on [REDACTED]. The petitioner entered the United States on or about February 10, 1998, without inspection, admission, or parole. On [REDACTED] 2012, the District Court, Probate Division Tenth District, [REDACTED] (hereinafter “juvenile court”) granted guardianship and conservatorship to the petitioner’s guardian, [REDACTED]. See *Order Appointing: Guardian Conservator*, Dist. Ct. Prob. Div., 10th Dist., [REDACTED].

The petitioner filed this Form I-360, Petition for Special Immigrant, on February 6, 2012. The director subsequently issued a Request for Evidence (RFE) because at the time of filing the petition, the petitioner was not subject to a valid court dependency order. 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.

We review these proceedings *de novo*. Review of the entire record, including the brief submitted on appeal, does not demonstrate that the petitioner is eligible for and merits classification as a special immigrant juvenile. The appeal will be dismissed.

Analysis

The director determined that the Minnesota probate court did not act as a juvenile court in the petitioner’s guardianship proceedings and therefore the petitioner did not establish that he obtained a juvenile court order as required by section 101(a)(27)(J) of the Act. On appeal, the petitioner asserts that the guardianship order is valid for purposes of SIJ classification because he was a minor when the guardianship and conservatorship orders were issued notwithstanding the fact that the statute upon which the order was based did not assert jurisdiction over the petitioner as a minor.

The record shows that the petitioner was placed under the guardianship and conservatorship of Ms. [REDACTED] on [REDACTED], 2012 when he was 17 years old, two days prior to his eighteenth birthday. The court based its determinations on section 524.5-309(c) of the Minnesota Statutes, which specifies who may qualify to serve as a guardian, and section 524.5-313(c), which provides the powers and duties of the guardian. See MINN. STAT. §§ 524.5-309 and 524.5-313

(West 2015). Section 524.5-313(c), in relevant part, states that the “court may appoint a guardian if it determines that all the powers and duties listed in this section are needed to provide for the needs of the incapacitated person.” The court made the requisite SIJ determinations based on a finding that the petitioner is an incapacitated person because he is a minor but did not assert its jurisdiction over the petitioner as a minor pursuant to section 524.5-201 of Minnesota state law (pertaining to the appointment and status of a guardian of a minor ward).

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.” *See* 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). The record does not demonstrate that the petitioner was treated as a juvenile at the time the order was issued. The court order states that the petitioner is legally unable to work, has no funds, and cannot obtain a driver’s license but does not state the basis for these determinations. Instead, the order concludes that the petitioner is in need of “advice, care, counsel and protection of an adult who can assist with his legal and emotional needs” and that this is reflected in the fact that the petitioner requested that Ms. [REDACTED] serve as his guardian. The court acknowledged that the petitioner was in high school at the time of the court hearing, but elected to treat the petitioner as an incapacitated adult. Consequently, the court order that the petitioner submits to establish eligibility for SIJ status is insufficient because the District Court, Probate Division Tenth District, [REDACTED], did not assert its jurisdiction over the petitioner as a juvenile as required by section 101(a)(27)(J)(i) of the Act.

As the petitioner has not established his eligibility for SIJ classification under section 101(a)(27)(J)(i) of the Act, we do not reach the issue of whether the present record contains sufficient evidence 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.

Conclusion

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, the petitioner has not met his burden.

ORDER: The appeal is dismissed.