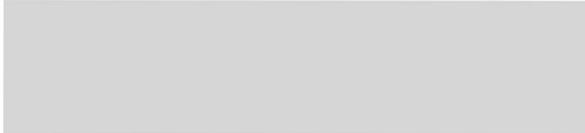




U.S. Citizenship
and Immigration
Services

(b)(6)



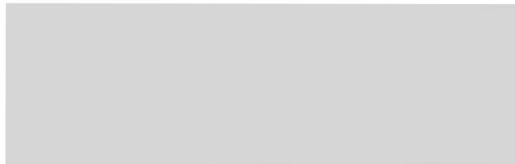
Date: JUN 03 2015

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: Self-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:



INSTRUCTIONS:

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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Durham, 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 sustained.

The petitioner is a 17-year-old citizen of El Salvador 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 failed to establish that her request for SIJ classification is bona fide and merits the agency’s consent. On appeal, the petitioner submits a brief and additional evidence.

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[.]

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 dependency order nor the best interests 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.” 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 El Salvador on [REDACTED] and she entered the United States without inspection on or about April 26, 2011. She was apprehended by U.S. Border Patrol at the time of her entry in [REDACTED] Texas and issued a Notice to Appear in removal proceedings. On July 18, 2011, the petitioner was discharged from Office of Refugee Resettlement (ORR) custody and placed with her mother. On [REDACTED], the District Court in [REDACTED] County, North Carolina (hereinafter “juvenile court”) granted the petitioner’s mother and a family friend joint legal custody of the petitioner. [REDACTED]

The petitioner filed this Form I-360, Petition for Special Immigrant, on March 12, 2013. The director subsequently issued a notice of intent to deny (NOID) the petitioner’s Form I-360 SIJ petition. The petitioner responded to both NOID with additional evidence which the director found insufficient to establish eligibility. The director determined that the petitioner sought SIJ classification primarily for immigration purposes rather than for the purpose of obtaining relief from abuse, neglect or abandonment, and he denied the petition accordingly.

The AAO reviews these proceedings *de novo*. A full review of the record establishes the petitioner’s eligibility. The petitioner’s claims and additional evidence submitted on appeal have overcome the director’s ground for denial. The appeal will be sustained for the following reasons.

Analysis

On [REDACTED] the juvenile court entered an order containing the following findings:

6. Defendant is the biological father of [the petitioner]. Defendant abandoned [the petitioner’s mother] when she was seven months pregnant with [the petitioner] and Defendant did not have any relationship with [the petitioner or her mother] after that time. In fact, [the petitioner] has never resided with Defendant and she has never seen or spoken to Defendant.

...

9. [The petitioner] began immigrating to the United States on April 1, 2011. She left El Salvador to flee from gang violence in her neighborhood and because she was afraid that she would be raped and killed by gang members. Gang activity in the minor’s neighborhood had become increasingly dangerous starting in or around 2010.

...

15. [The petitioner's mother] is a fit and proper person to have the sole physical care and custody of the [petitioner] and Plaintiffs are fit and proper persons to have joint legal custody and control of the [petitioner]. It is in [the petitioner's] best interest that [the petitioner's mother] be given sole physical care and custody and that Plaintiffs together be given joint legal custody and control.

16. Defendant is not a fit and proper person to have custody of the [petitioner], as he abandoned the [petitioner] before she was born and has never met or spoken to the [petitioner]. Furthermore, Defendant, who was served with process in this matter, has not appeared or otherwise disputed Plaintiffs' request for custody.

The director determined that "[t]he court custody order does not make specific findings of fact upon which the abuse, abandonment and/or neglect are based nor does it specify whether [the petitioner was] abused, abandoned or neglected." *Director's Decision* at 2. The director, however, in the same paragraph acknowledged that the juvenile court found that the petitioner's biological father abandoned the petitioner's mother while she was pregnant with the petitioner. *See id.* The director also acknowledged the juvenile court's finding that the petitioner has never seen or spoken with her biological father. *Id.* The petitioner correctly asserts that the director erred by disregarding these facts and going behind the court's order to make his own determination that the petitioner had not been abandoned by her father under North Carolina law.

When adjudicating a petition for special immigrant juvenile status, USCIS examines the juvenile court order to determine if the order contains the requisite findings of dependency or custody; nonviability of family reunification due to parental abuse, neglect or abandonment; and the best-interest determination, as stated in subsections 101(a)(27)(J)(i)-(ii) of the Act. USCIS is not the fact finder in regards to issues of child welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. Section 101(a)(27)(J)(i)-(ii) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (referencing the determinations of a juvenile court or other administrative or judicial body).¹ USCIS examines the relevant evidence only to ensure that the record contains a reasonable factual basis for the court's order.

Court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS's consent. Orders lacking specific factual findings are insufficient to warrant the agency's consent and must be supplemented by other relevant evidence

¹ See *Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, 4-5 (May 25, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

demonstrating the factual basis for the court's order.² Accordingly, the agency's consent determination must be based on material evidence in the record, not a subjective belief that the juvenile court order was sought primarily to obtain an immigration benefit.

In this case, the juvenile court order contains facts sufficient to establish a reasonable basis for the court's nonviability-of-reunification and best-interest determinations. The court order discusses the basis of the court's findings of abandonment by the petitioner's father. It also discusses threats to the petitioner's safety if she returns to El Salvador and the overall danger of gang violence in the country. On appeal, the petitioner submits the underlying custody complaint and supporting affidavits the petitioner and her mother filed with the juvenile court, which contain additional factual details to support the court's determinations. The petitioner's affidavit contains the following narrative:

5. I fled El Salvador beginning on April 1, 2011, because I feared that 18th Street gang members were going to rape and kill me. In or around 2010, the town where I lived with my grandmother became increasingly dangerous because of gang violence During this time, a girl that lived within walking distance of the house of my grandmother (where I was living) was raped, murdered, and dismembered by 18th Street gang members. . . .

6. One day, I and a friend were walking down the street when a gang member approached us with a knife and demanded that we give him our phones and money. We did not have anything to give the gang member, and luckily we managed to break free and run into a store a few yards away. The gang member ran away, but I was terrified because I realized the gang member could have stabbed or killed me. Around that time, gang members started calling the house where I lived with my grandmother and threatened violence upon our family if we did not pay the gang.

. . .

9. I do not want to return to El Salvador. If I am forced to return to El Salvador, I will be separated from my mother and placed back in an unsafe area under the constant threat of gang violence. Because I have never met or talked to my biological father . . . I do not want to live with him and do not think living with him is possible. . . .

Petitioner's Affidavit, dated September 12, 2012.

The petitioner's mother's affidavit contains the following narrative:

4. Defendant [REDACTED] is the biological father of [the petitioner]. Defendant abandoned [me] when I was seven months pregnant with [the petitioner]. [The petitioner] has never resided with Defendant and has never seen or spoken to Defendant.

. . .

² *Id.* at 5; See also Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981, 54985 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11).

7. After I immigrated to the United States, my mother kept me informed about an increase in gang activity in and around the town and neighborhood where she and [the petitioner] were living. I was concerned about [the petitioner's] safety living in that area. Sometime before April 1, 2011, I spoke to my mother about threats that gang members had made against her and [the petitioner]. Based on these threats, I and [the petitioner's] grandmother agreed it was best for [the petitioner] to come to the United States to live with me.

...

11. I believe that it is in [the petitioner's] best interest to stay with me in the United States. If [the petitioner] is returned to El Salvador, she will be separated from me, her natural mother, and placed back in an unsafe area under the constant threat of gang violence. Because her father, Defendant, abandoned her before her birth and his whereabouts are unknown, I do not believe it is possible for [the petitioner] to be reunited with him in El Salvador, if she should be returned there.

Affidavit of [REDACTED] dated September 11, 2012.

A *de novo* review of the record, including the additional evidence submitted on appeal, shows that the petitioner's mother and a family friend petitioned for joint custody of the petitioner because her father who resides in El Salvador abandoned her before her birth and she now faces the threat of violence from gangs in the country. This determination is not negated by the director's finding that during the petitioner's apprehension by Border Patrol agents she testified that her mother and stepfather made arrangements for her to be smuggled into the United States and that the purpose of her entry into the United States was to reunite with her mother. *Director's Decision* at 2. As the petitioner correctly observes, such statements are not material to determining whether her biological father abandoned her or whether it is in her best interest to return to El Salvador.

The director also found that the best-interest determination was undermined by the petitioner's testimony before Border Patrol agents that she did not have a credible fear of being returned to El Salvador. *Id.* On appeal, the petitioner states that she was only 13 years old and had just completed a 26-day journey to the United States at the time Border Patrol agents interviewed her. She states that even if the family court considered this statement, it is inherently unreliable due to her state of mind upon her arrival in the United States. The petitioner's assertions have merit. The petitioner's brief testimony before the Border Patrol regarding her return to El Salvador does not negate the subsequent detailed evidence she provided to the juvenile court of the threats from gang violence in the country. A full review of the evidence in the record provides a reasonable basis for the court's finding that it is in the petitioner's best interest to remain in the United States where her mother resides because she was abandoned by her father in El Salvador and she faces threats from gang violence in that country.

In sum, the preponderance of the evidence shows that the petitioner's request for SIJ classification is bona fide and that the agency's consent to the grant of SIJ status is warranted under subsection 101(a)(27)(J)(iii) of the Act. The director's decision to the contrary shall be withdrawn.

Conclusion

In this case, as in all visa petition 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, the petitioner has shown by a preponderance of the evidence that she is eligible for the benefit. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.