



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JUN 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:

[Redacted]

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](http://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 Raleigh-Durham, North Carolina Field Office Director (the director) denied the special immigrant visa petition. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner is a 19-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 denied the petition because he found that the juvenile court order did not contain the requisite findings of dependency or custody and nonviability of parental reunification due to abuse, neglect or abandonment. The director further found that the petitioner was not eligible for SIJ classification because the record did not provide a reasonable factual basis for the juvenile court's dependency order and that the petitioner sought the juvenile court order primarily for immigration purposes. On appeal, the petitioner submits a brief reasserting her 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 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.” 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 El Salvador on [REDACTED]. The petitioner entered the United States on or about May 18, 2013, without inspection, admission, or parole. She was apprehended by U.S. Border Patrol agents at the time of her 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). On June 22, 2013, the petitioner was released from ORR custody to her sister, [REDACTED]. On March 13, 2014, the General Court of Justice District Court Division, [REDACTED] (hereinafter “juvenile court”) granted a consent custody order to the petitioner’s uncle, Mr. [REDACTED]. See *Consent Custody Order*, Dist. Ct. Div., [REDACTED] (March 13, 2014).

The petitioner filed this Form I-360, Petition for Special Immigrant, on March 18, 2014 based on the juvenile court’s findings of fact. The director issued a notice of intent to deny (NOID) the Form I-360 SIJ petition because the record lacked evidence of the facts supporting the juvenile court’s custody order. The petitioner responded to the NOID with a brief and additional evidence, which the director found insufficient to overcome the intended basis of denial. The director denied the Form I-360 petition on September 25, 2014, and the petitioner timely 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 petitioner’s arguments fail to establish her eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

#### *Analysis*

When adjudicating an SIJ petition, USCIS examines the juvenile court order only to determine if it contains the requisite findings of dependency or custody; nonviability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner’s best interests, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. USCIS is not the fact finder in regards to these issues of child welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. See 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). Accordingly, USCIS examines the relevant evidence only to ensure that the

record contains a reasonable factual basis for the court's order.<sup>1</sup> 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 demonstrating the factual basis for the court's order.<sup>2</sup>

The court order dated March 13, 2014, briefly describes the circumstances surrounding the petitioner's entry into the United States and her residence with her uncle in [REDACTED] North Carolina. Specifically, the court order states that the petitioner's uncle shall have joint custody with the petitioner's parents, that it is in the petitioner's best interest that her uncle has primary custody, and that it would not be in her best interest to return to El Salvador. Further, the court order states that "[r]eunification with either of the minor child's parents is not viable based on the facts considered by this Court. . . ." Upon review, the director determined that the court order did not make the necessary custody determination because the court order granted joint custody to the petitioner's uncle as well as her parents. In response to the NOID, the petitioner submitted an amended court order that awarded sole custody of the petitioner to her uncle which was entered *nunc pro tunc* to the date of the original consent custody order. The director rejected the application of the amended court order stating that the record did not show that the petitioner's parents were given notice of the modifications to the order in violation of North Carolina's Rules of Civil Procedure.<sup>3</sup> The director also concluded that due to discrepancies in the record, the factual findings upon which those determinations were made were insufficient and that the agency's consent was not warranted in this case.

The director correctly determined that the petitioner did not establish that her primary purpose in seeking the juvenile court order was to gain relief from abuse, abandonment, or neglect because the record lacked a reasonable factual basis for the court order. The record contains the juvenile court order, the amended juvenile court order, and the petitioner's affidavit submitted in support of her Form I-360 petition. In her affidavit, the petitioner stated that she was mostly raised by her grandmother and only briefly resided with her parents. She stated that her father sexually abused her and her sisters and as a result, the petitioner left home at the age of thirteen. While the petitioner is not required nor expected to recount the circumstances of her father's abuse, her affidavit is brief and does not provide probative, detailed information sufficient to support the court order. In addition, the court determined that the petitioner's reunification with her parents was not viable "based on the facts considered by this Court," but there is no information regarding the specific facts that the court considered to make its determination; it is not evident that any of the information provided in the petitioner's affidavit was considered in the juvenile court proceedings when the requisite nonviability determination was made.

---

<sup>1</sup> See USCIS 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).

<sup>2</sup> *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).

<sup>3</sup> As the appeal is dismissed on other grounds, we do not reach the issue of whether the *nunc pro tunc* juvenile court order is valid for SIJ purposes.

Accordingly, the relevant evidence in the record fails to establish that the petitioner is eligible for SIJ classification because the guardianship order is deficient under section 101(a)(27)(J)(i)-(ii) of the Act. Neither the court order dated March 13, 2014, nor the amended court order is supported by the facts upon which the custody determination was based. The present record lacks sufficient evidence providing a reasonable factual basis for the court's determinations and the petitioner's claims on appeal do not demonstrate that the request for SIJ classification was bona fide and merits the agency's consent under section 101(a)(27)(J)(iii) of the Act.

### *Conclusion*

The petitioner has not shown by a preponderance of the evidence that her request for SIJ classification is bona fide and merits the agency's consent. Consequently, the petitioner does not meet subsections 101(a)(27)(J)(i) and (iii) of the Act and the appeal will be dismissed.

In visa petition proceedings, the petitioner bears the burden of proof to establish her 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 shown by a preponderance of the evidence that she is eligible for the benefit. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.