



U.S. Citizenship
and Immigration
Services

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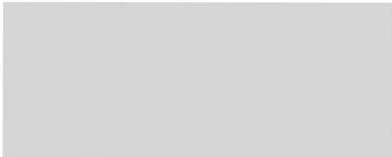
DATE: **JUN 09 2015**

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:



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 Omaha, Nebraska 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 Guatemala 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 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 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 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 Guatemala on [REDACTED]. The petitioner entered the United States on or about June 4, 2012, 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 August 17, 2012, the petitioner was released from ORR custody to his cousin, [REDACTED]. On March 28, 2013, the County Court Probate Division, [REDACTED] (hereinafter “juvenile court”) granted an Order Appointing Guardian for a Minor to the petitioner’s cousin, Mr. [REDACTED]. See *Order Appointing Guardian for a Minor*, Prob. Div., [REDACTED] (March 28, 2013).

The petitioner filed this Form I-360, Petition for Special Immigrant, on April 15, 2013, based on the juvenile court’s findings of fact. The director issued a Request for Evidence (RFE) and 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 RFE and 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 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 his 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.¹ 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.²

The director correctly determined that the petitioner did not establish that his 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 petitioner's affidavit submitted in support of his Form I-360 petition, and the court transcripts from the juvenile court proceedings. In his brief affidavit, the petitioner stated that he lived with his grandmother for six years prior to coming to the United States. The petitioner explained that he is one of nine children and that although his parents tried their best to care for him, they could not and ultimately abandoned him. The petitioner did not provide further probative details sufficient to provide a reasonable, factual basis for the juvenile court's determination that he was abandoned by his parents, that reunification was not possible, and that it was in his best interest not to return to Guatemala. The court transcript likewise did not provide any facts upon which the custody determination was based other than to establish that the petitioner's parents did not reside in the United States.

On appeal, the petitioner asserts that although "the order did not specifically allege what constituted the abandonment," he subsequently provided a clear explanation of his abandonment in his affidavit. He further states that the court transcript clearly shows that the guardianship proceedings were not initiated primarily for immigration purposes. However, the petitioner did not demonstrate that the court order or the court transcript contained any relevant facts to support the requisite determinations made by the juvenile court. On appeal the petitioner submits a copy of the Application for Appointment of Temporary and Permanent Guardian of a Minor Child and an affidavit from the petitioner's cousin, [REDACTED]. In the application for guardianship, Mr. [REDACTED] stated that the petitioner's parents were not able to properly care for the petitioner "due to extreme poverty and lack of resources to support their nine children." Later in the same application for guardianship, Mr. [REDACTED] contradicted the earlier described neglect by briefly stating that the petitioner was abandoned by his parents. Mr. [REDACTED] affidavit in support of his application for guardianship of the petitioner likewise did not provide any probative details regarding the claimed abandonment and it remains unclear on what grounds the juvenile court based the requisite findings of dependency or custody and nonviability of parental reunification. In sum, the present record lacks sufficient evidence to support the juvenile court's finding of abandonment 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.

¹ 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).

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).

Conclusion

The petitioner has not shown by a preponderance of the evidence that his request for SIJ classification is bona fide and merits the agency's consent. Consequently, the petitioner does not meet subsection 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 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 shown by a preponderance of the evidence that he is eligible for the benefit. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.