



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JUN 09 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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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

Ron Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The New York District 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 The decision of the director will be withdrawn and the petition will be remanded to the director for further action.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 22-year-old citizen of India 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 is not eligible for SIJ classification because he was 21 years old at the time he filed his SIJ petition, and denied the petition accordingly.

We conduct appellate review on a *de novo* basis. 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. 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) District or 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)(hereinafter “*SIJ Memo #3*”)(quoting H.R. Rep. No. 105-405 at 130 (1997)).

#### *Pertinent Facts*

The petitioner was born in India on [REDACTED]. He entered the United States from Mexico on March 4, 2013, when he was 20 years old. The petitioner applied for admission at the [REDACTED] Arizona Port-of-Entry without any entry documentation and indicated his intent to apply for asylum. He was taken into custody and issued a Notice to Appear in Removal Proceedings. On April 17, 2013, the petitioner was released on parole.<sup>1</sup>

On January 13, 2014, the Family Court of the State of New York, [REDACTED] (hereinafter “juvenile court”) determined that reunification of the petitioner with his father is not viable and it is not in his best interest to return to India. *Order - Special Juvenile Status*, N.Y. Fam. Ct., [REDACTED] (January 13, 2014). The juvenile court appointed [REDACTED] guardian of the petitioner for three days, until the petitioner turned 21 years old, and issued Mr. [REDACTED] letters of guardianship. *Order Appointing Guardian of the Person*, N.Y. Fam. Ct., [REDACTED] (Jan. 13, 2014); *Letters of Guardianship*, N.Y. Fam. Ct., [REDACTED] (Jan. 13, 2014).

The director determined that the petitioner is not eligible for SIJ classification because he was 21 years old at the time he filed his Form I-360, Petition for Special Immigrant, (SIJ petition). On appeal, the petitioner asserts that USCIS received the SIJ petition on January 15, 2014, [REDACTED] prior to his 21<sup>st</sup> birthday. The petitioner submits a copy of a FedEx Express receipt and delivery confirmation.

#### *Analysis*

To be classified as an SIJ, an alien must be a child on the date the SIJ petition is filed. 8 C.F.R. § 204.11(c)(1) - (2). A child is defined under the Immigration and Nationality Act as an unmarried person under the age of 21. Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). The record contains a dated-stamped copy of the FedEx Express receipt, which reflects that on January 15, 2014 [REDACTED] prior to the petitioner’s 21<sup>st</sup> birthday) the Vermont Service Center received the petitioner’s SIJ petition. The Vermont Service Center then forwarded the SIJ petition to the Chicago Lockbox, which is the USCIS designated filing location for SIJ petitions. As the petitioner’s SIJ petition was received by USCIS prior to the petitioner’s 21<sup>st</sup> birthday, he was a

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<sup>1</sup> The New York City Immigration Court terminated removal proceedings against the petitioner on March 26, 2014.

child on the date the petition was filed. The petitioner has therefore overcome the director's sole basis for denial. Accordingly, the director's determination shall be withdrawn.

The petition is not approvable, however, because the record remains deficient.<sup>2</sup> On January 13, 2014, the juvenile court entered an order containing, in part, the following findings:

3. The above-named child is dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court. . . .
4. Reunification with one or both of his parents is not viable due to: The minor's father physically and emotionally abused the minor from a very young age until the minor left the family home with the help of a maternal relative.
5. It is not in the child's best interest to be removed from the United States and returned to India his country of nationality or country of last habitual residence of the child or his birth parent or parents.

*Order – Special Immigrant Juvenile Status* (Jan. 13, 2014).

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 section 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. *See* Section 101(a)(27)(J)(i)-(ii) of the Act (referencing the determinations of a juvenile court or other administrative or judicial body). Court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS's consent. *See SIJ Memo #3* at 4-5. Court 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. *Id.*

Here, the court's findings do not contain a reasonable factual basis for the nonviability-of-reunification and best-interest determinations. The court order states that reunification with the petitioner's father is not viable because his father "physically and emotionally abused" him, but it does not contain any factual findings that the court made to determine that the petitioner was abused under New York law. The court's ruling that it is not in the petitioner's best interest to be returned to India also contains no factual findings upon which that determination was made. The record contains no evidence from the juvenile court proceedings such as, for example, the original application for guardianship, the transcript of any hearing held on the application,

<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director 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).

affidavits from individuals who know or have evaluated the petitioner, or any other evidence the court considered regarding the nonviability-of-reunification and best-interest determinations. *See SIJ Memo #3* at 5; *see also Special Immigrant Juvenile Petitions*, 76 Fed. Reg. 54978, 54981, (proposed Sept. 6, 2011)(to be codified at 8 C.F.R. § 204.11)(describing the types of evidence that USCIS may request and consider when making a consent determination). Because of these deficiencies, consent to SIJ classification under section 101(a)(27)(J)(iii) of the Act is not warranted based upon the current record.

### *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 April 25, 2014 decision of the New York District Director 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.