



U.S. Citizenship
and Immigration
Services

(b)(6)



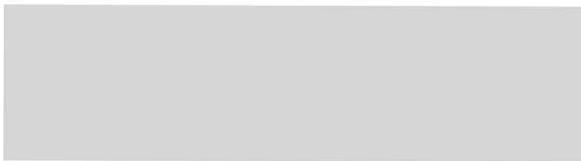
DATE: JUN 18 2015

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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The St. Louis, Missouri Field Office Director (the director) denied the petition. The matter is now before the AAO. The decision of the director will be withdrawn, and the petition will be approved.

The petitioner is a 17-year-old citizen of Honduras 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 was not eligible for SIJ classification because the record did not provide a reasonable factual basis for the juvenile court's dependency order, and he denied the petition accordingly. On appeal, the petitioner asserts that he provided evidence of specific factual findings that support a reasonable basis for the juvenile court's dependency order.

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.” 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 Honduras on [REDACTED]. He entered the United States without inspection, admission, or parole on or about March 23, 2013, when he was [REDACTED] years old. He was apprehended by U.S. Border Patrol at the time of his entry near [REDACTED] Texas and issued a Notice to Appear in removal proceedings. The petitioner was taken into custody of the Office of Refugee Resettlement (ORR) and released to his uncle, [REDACTED]. On [REDACTED] 2014, the [REDACTED] Missouri, Probate Division (hereinafter “juvenile court”) declared jurisdiction over the petitioner and appointed Mr. [REDACTED] as his guardian. See *Judgment*, [REDACTED], MO, Prob. Div., Estate [REDACTED]. The petitioner filed this Form I-360, Petition for Special Immigrant, on July 21, 2014, based on the juvenile court’s findings of fact. The director issued a Request for Evidence (RFE) because the record lacked evidence of the facts supporting the juvenile court’s custody order. The petitioner responded to the RFE with a brief and additional evidence which the director found insufficient and denied the Form I-360 petition. The petitioner timely appealed.

We review these proceedings *de novo*. Review of the entire record, including the brief submitted on appeal, demonstrates that the petitioner is eligible for and merits classification as a special immigrant juvenile. The director’s decision will be withdrawn and the appeal will be sustained.

Analysis

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to consent to the grant of SIJ status. This consent determination is an acknowledgement that the request for SIJ classification is bona fide, which means that the juvenile court order and the best-interest determination were sought primarily to gain relief from parental abuse, neglect, abandonment or a similar basis under state law, and not primarily to obtain immigrant status.¹ When adjudicating an SIJ petition, USCIS examines the juvenile court order only to determine if it contains the

¹ H.R. Rep. No. 105-405 at 130 (1997). See also Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs., et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, p. 3 (Mar. 24, 2009).

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.² 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.³

On [REDACTED] 2014, the juvenile court entered a guardianship order and an order regarding the minor's eligibility for special immigrant juvenile status. The guardianship order found that the petitioner's natural parents "are not willing, able or fit to act as natural guardians of the minor at this time" and appointed the petitioner's uncle as his guardian but did not make the requisite findings of dependency, nonviability of reunification, and best interest determinations. The order regarding the petitioner's eligibility for special immigrant juvenile status states that one or both of the petitioner's parents subjected him to "parental abuse and/or neglect . . . and/or abandonment," but it does not specify which of these three circumstances the juvenile court determined existed in the petitioner's case. The best interest determination also contains no specific factual details upon which the finding was made. However, other documentation in the record from the juvenile court proceedings shows a reasonable basis for the court's order. The transcript of proceedings demonstrates that the petitioner's uncle, [REDACTED] testified in court that the petitioner's father abandoned the petitioner just after he was born. Mr. [REDACTED] testified that the petitioner's father resides in Chicago, has a criminal record, and has not seen the petitioner since the petitioner was 15 days old. The court transcripts also show that the guardian ad litem for the petitioner, [REDACTED] confirmed that the petitioner was abandoned by his father. In addition to the court transcripts, the petitioner submitted his Unaccompanied Minor Case Summary and Individual Service Plan which further provided information about the petitioner's father and the unstable conditions in Honduras that support the juvenile court's determinations.

De novo review of the record shows that the juvenile court order was issued upon testimony that the petitioner was abandoned by his father as an infant and that it would not be in his best interests to return to Honduras. While the court orders do not make sufficiently specific findings of fact, the additional evidence submitted demonstrates the factors considered by the juvenile court that led to its findings. 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

² 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).

³ *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).

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 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). Here, the petitioner has shown by a preponderance of the evidence that he is eligible for the benefit. Accordingly, the director's decision will be withdrawn and the petition will be approved.

ORDER: The November 13, 2014 decision of the St. Louis Field Office Director is withdrawn, and the petition is approved.