



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 25 2015**

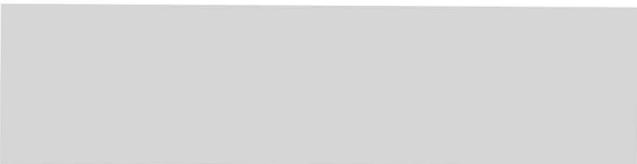
FILE #: [REDACTED]

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Charlotte, North Carolina Field Office Acting Director (the director) revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 20-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 initially approved the petition, but subsequently revoked that approval on notice because the juvenile court's temporary custody order does not make a permanent finding of nonviability of reunification with the petitioner's mother, and he denied the petition accordingly. On appeal, the petitioner asserts that the evidence submitted below established his eligibility and the petition's approval should be reinstated.

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 custody order nor the best interest 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]. The petitioner entered the United States on or about May 10, 2012, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol agents at the time of his 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 [REDACTED] 2012, the petitioner was released from ORR custody to his sister, [REDACTED]. On [REDACTED] 2013, the General Court of Justice District Court Division, [REDACTED] (hereinafter “juvenile court”) granted an ex parte emergency custody order to the petitioner’s sister, Ms. [REDACTED]. See *Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED].

The petitioner filed this Form I-360, Petition for Special Immigrant, on May 9, 2013, based on the juvenile court’s findings of fact and the director initially approved the petition. The director subsequently issued a notice of intent to revoke (NOIR) approval of the Form I-360 SIJ petition because at the time of filing the petition, the petitioner was not subject to a valid court dependency order. The director also determined that the petitioner sought the juvenile court order primarily for immigration purposes. The petitioner responded to the NOIR with additional evidence, which the director found insufficient to overcome the intended basis of denial. The director revoked approval of the Form I-360 petition and the petitioner timely appealed.¹

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner’s eligibility and the petitioner’s assertions on appeal do not overcome the director’s grounds for denial. The director’s decision will be affirmed for the following reasons.

¹ The director revoked approval of the Form I-360 because the petitioner was ineligible at the time of filing. However, when it later comes to the attention of U.S. Citizenship and Immigration Services (USCIS) that an SIJ petition was approved in error, the proper course of action is to reopen the Form I-360 upon service motion pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii), grant the petitioner 30 days to submit a brief, and issue a new decision denying the petition if the petitioner’s brief fails to establish his/her eligibility. Despite the director’s procedural error, the record reveals no resultant prejudice to the petitioner. Through the director’s NOIR, the petitioner was provided the opportunity to supplement the record and the petitioner has been afforded a second opportunity to demonstrate his eligibility on appeal.

Analysis

The director correctly determined that the petitioner failed to demonstrate that he is or was the subject of a qualifying juvenile court dependency or custody order because the ex parte emergency custody order only made a temporary finding that reunification with the petitioner's father was not viable. On appeal, the petitioner asserts that USCIS is prohibited by the Trafficking Victims Protection and Reauthorization Act (TVPRA) from denying his petition on the basis that the juvenile court's jurisdiction expired when he turned eighteen years old. The petitioner states that he remains eligible for SIJ classification so long as he was subject to a valid dependency order that subsequently terminated only based on age. In the instant case, however, the director did not deny the SIJ petition because the petitioner "aged out" of the juvenile court's jurisdiction after he turned eighteen years of age. See N.C. Gen. Stat. Ann. § 48A-2 (West 2015)(defining a minor as "any person who has not reach the age of 18 years."). Here, the juvenile court issued a custody order for the "temporary care, custody, and control" of the petitioner for a defined period time. See *Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED]. Accordingly, the director denied the petition because the temporary juvenile court order does not contain the requisite nonviability-of-reunification determination and therefore is deficient under section 101(a)(27)(J)(i) of the Act.

The director also correctly determined that the juvenile court order was deficient and lacked specific factual findings sufficient to provide a basis for USCIS consent for the petitioner's SIJ classification. 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.² Here, the court order dated January 18, 2013, states that the "child has been found eligible and continues to be eligible for long term foster care . . . based on the abuse, neglect or abandonment by his parents." However, eligibility for long term foster care has not been a statutory eligibility requirement for SIJ classification at subsection 101(a)(27)(J)(i) of the Act since March 23, 2009, prior to this petition's filing date. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, § 235(d),(h) (Dec. 23, 2008). See also Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs. (USCIS), et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, 2 (Mar. 24, 2009). In addition, the order states that "reunification with one or both [of the petitioner's] parents is not viable." The order does

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).

not state on which ground family reunification is not viable and contains no factual findings regarding the nonviability of parental reunification.

On appeal, the petitioner asserts that the director does not possess the authority to second-guess the juvenile court and that the court explicitly made a finding that the petitioner was neglected by his father. He also states that the statute and the regulations do not require that he be under jurisdiction of the juvenile court at the time of filing the Form I-360 petition. The plain language of the statute requires that an SIJ petitioner demonstrate that “reunification with 1 or both of the immigrant’s parents is not viable.” Section 101(a)(27)(J)(i) of the Act. Here, the juvenile court awarded the petitioner’s sister the “temporary care, custody, and control” of the petitioner. *See Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED]. The juvenile court’s finding of nonviability-of-reunification with one or both of the petitioner’s parents was issued on a temporary basis and does not establish that “family reunification is no longer a viable option” because the petitioner has not shown that the court ultimately granted permanent custody to the petitioner’s sister. *See* Section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (providing that a court-appointed custodian who acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility). No evidence has been submitted to show that the juvenile court subsequently issued a permanent custody order to the petitioner’s sister. Further, the record does not demonstrate that the juvenile court found that the petitioner was neglected by his father as claimed. Accordingly, the petitioner does not meet the requirements of sections 101(a)(27)(J)(i) and (iii) of the Act and is ineligible for SIJ classification.

Conclusion

The petitioner did not establish that he was the subject of a qualifying juvenile court custody order. Consequently, the petitioner does not meet section 101(a)(27)(J) of the Act and the petition will remain denied.

In these 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, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. Approval of the petition remains revoked.