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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **JUN 25 2015**

[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) 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 Albuquerque, New Mexico Field Office 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 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 initially approved the petition, but subsequently revoked that approval on notice 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 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 El Salvador on [REDACTED]. The petitioner entered the United States on or about May 31, 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 August 13, 2012, the petitioner was released from ORR custody to his mother, [REDACTED]. On January 22, 2013, the Ninth Judicial District Court, [REDACTED] County (hereinafter “juvenile court”) granted an Order for Kinship Guardianship to the petitioner [REDACTED]. See *Order for Kinship Guardianship*, Ninth Jud. Dist. Ct., No. [REDACTED] (January 22, 2013).

The petitioner filed this Form I-360, Petition for Special Immigrant, on January 25, 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 record lacked evidence of the facts supporting the juvenile court’s custody order. The petitioner did not respond to the NOIR and the director revoked approval of the Form I-360 petition. The petitioner timely appealed.¹

We review these proceedings *de novo*. A full review of the record does not establish the petitioner’s eligibility. 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

In his decision, the director incorrectly determined that the juvenile court order was deficient because the juvenile court did not deem that the petitioner was eligible for long term foster care. The Trafficking Victims Protection and Reauthorization Act (TVPRA) removed the need for a juvenile court to deem a juvenile eligible for long-term foster care due to abuse, neglect or abandonment, and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law.² To the extent that the director cited the petitioner's eligibility for long-term foster care as a basis for the revocation of approval, this portion of the decision is withdrawn.

Nonetheless, we find no error in the director's ultimate determination that the petitioner is ineligible for 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.³ 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.⁴

In this case, the juvenile court order states only that the petitioner's reunification with his parents is not viable due to abandonment. It does not address whether or not it would be in his best interest to return to El Salvador or remain in the United States with his guardian. The record contains no other, relevant supporting evidence such as, for example, the original application for

² *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, § 235(d),(h) (Dec. 23, 2008). 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 when this petition was filed. *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).

³ *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).

⁴ *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).

guardianship, the transcript of any hearing held on the application or any other evidence the court considered regarding the requisite findings. On appeal, the petitioner asserts that the director arbitrarily revoked approval of the his Form I-360 petition and also failed to explain why the guardianship order was no longer sufficient. However, 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. The court order dated January 22, 2013, states only that “based on the petition presented, that the parents have abandoned [the petitioner].” The order does not further state any facts upon which this determination was based.

The petitioner also asserts that his due process rights are being violated because he was not provided sufficient notice to obtain the requested juvenile court documents and that he should not be required to relive the details of his abandonment when the juvenile court already made this determination. Section 101(a)(27)(J)(i) of the Act prescribes the eligibility requirements for SIJ classification and does not infringe upon states’ rights to implement state family law. The Act does not interfere with state court rulings on child custody. However, to obtain the immigration benefit of SIJ classification, a child must be subject to a juvenile court order which contains the non-viability and best interest determinations required by section 101(a)(27)(J)(i) of the Act. Here, the relevant evidence fails to demonstrate that the petitioner was the subject of a qualifying juvenile court dependency or custody order that made the required findings. The record also lacks any evidence of a juvenile court determination that it would not be in the petitioner’s best interest to return to El Salvador as specified at section 101(a)(27)(J)(ii) of the Act. Consequently, the petitioner does not meet the requirements of section 101(a)(27)(J) of the Act and is ineligible for SIJ classification.

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 section 101(a)(27)(J) of the Act and the appeal will be dismissed.

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.