



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 30 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 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 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 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 parents, 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 Guatemala on [REDACTED]. The petitioner entered the United States on or about May 30, 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). The petitioner was subsequently released from ORR custody to his uncle, [REDACTED]. On [REDACTED] 2013, the General Court of Justice District Court Division, [REDACTED] (hereinafter “juvenile court”) granted an ex parte emergency custody order to Mr. [REDACTED]. See *Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED].

The petitioner filed this Form I-360, Petition for Special Immigrant, on March 19, 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 a brief and 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

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.

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.

Analysis

The director determined that the petitioner did not 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 parents was not viable. The director further determined that the juvenile court order lacked specific factual findings sufficient to provide a basis for USCIS consent for the petitioner's SIJ classification. On appeal, the petitioner asserts that the director does not possess the authority to second-guess the juvenile court order and that an emergency custody order issued in North Carolina is enforceable and carries the full weight of the law. He further contends that current law provides only that he satisfy the following requirements: (1) that he must have at one point been the subject of a valid dependency order that subsequently terminated solely based on his turning 18 years old; (2) that he is unmarried; and (3) that he is under 21 years old.

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 guardian temporary custody pursuant to North Carolina statutes 50-13.5(c)(1), (2), and 50A-204. *See Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED]. Sections 50-13.5(c)(1) and (2) of North Carolina general statutes provide that North Carolina courts have jurisdiction over custody issues for minors including temporary emergency jurisdiction proscribed under section 50A-204. *See* N.C. Gen. Stat. Ann. §§ 50-13.5(1)-(2) and § 50A-204 (West 2015). The juvenile court's finding of nonviability-of-reunification with the petitioner's parents was issued on a temporary basis. This temporary determination 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 uncle. *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).

The petitioner contends that even if the *ex parte* order was temporary, the North Carolina Court of Appeals has held under *LaValley v. LaValley*, 564 S.E.2d 913 (N.C. App. Ct. 2002) that an unappealed temporary custody order converts into a permanent order at "some point in time." An order is temporary in North Carolina "if either (1) it states a clear and specific reconvening time in the order and the time interval between the two hearings was reasonably brief; or (2) the order does not determine all issues." *See Lamond v. Mahoney*, 583 S.E.2d 656, 659 (N.C. App. Ct. 2003)(citing *Brewer v. Brewer*, 533 S.E.2d 541, 546 (N.C. App. Ct. 2000)). In *LaValley* the Court of Appeals stated that "[a] temporary order is not designed to remain in effect for extensive periods of time or indefinitely . . . and must necessarily convert into a final order if a hearing is not set within a reasonable time." *See* 564 S.E.2d 913, 915 n.5. The Court emphasized that "[w]e are careful to use the words 'set for hearing' rather than 'heard' because

we are aware of the crowded court calendars in many of the counties of this State.” *Id.* In this case, the juvenile court set a hearing date on the same day it issued the temporary custody order.

The petitioner requests that we nevertheless consider the second hearing date to be “unreasonable” pursuant to *LaValley* because the juvenile court would lose jurisdiction over the petitioner. He contends that USCIS’s authority does not extend to “second-guess” the state juvenile court’s decision and that USCIS is impermissibly reviewing the juvenile court’s order in determining that the court order does not make specific findings of facts. 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 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]. Temporary custody orders in North Carolina may leave certain issues outstanding “pending the resolution of a claim for permanent custody.” *See Regan v. Smith*, 509 S.E.2d 452, 454 (N.C. App. Ct. 1998). The petitioner’s request that pursuant to the holding in *LaValley* we treat the temporary custody order as permanent would require us to make a state court determination, which as acknowledged by the petitioner, is outside our authority in these immigration proceedings. We are limited to the court’s findings, which made only a temporary determination regarding the nonviability-of-reunification with the petitioner’s parents. No evidence has been submitted to show that the juvenile court subsequently issued a permanent custody order to the petitioner’s uncle. In addition, the court order dated [REDACTED] states that the “child has been found eligible and continues to be eligible for long term foster care . . . based on the neglect and 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).

Finally, the petitioner asserts that USCIS is prohibited by the *Perez-Olano* Settlement Agreement from denying his petition on the basis that the juvenile court’s jurisdiction expired when he

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).

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. The *Perez-Olano* Settlement Agreement prevents USCIS from denying or revoking the approval of certain SIJ petitions based on age or dependency status if the petitioner was less than 21 years of age and the subject of a valid juvenile court dependency order at the time the petition was filed. See *Perez-Olano v. Holder*, No. CV 05-3604, 7-8 (C.D. Cal. 2005) (Settlement Agreement). Here, 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.”). The director instead denied the petition because the temporary juvenile court order does not contain the requisite nonviability-of-reunification determination causing it to be deficient under section 101(a)(27)(J) of the Act.

Conclusion

The petitioner did not establish that he was the subject of a qualifying juvenile court custody order. Consequently, the petitioner does not meet subsection 101(a)(27)(J)(i) 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.