

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

(b)(6)



DATE: JUN 30 2015

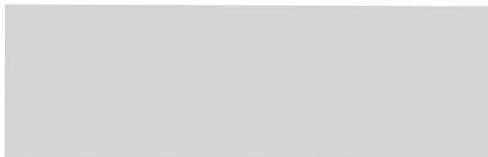
FILE #: [REDACTED]

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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Lawrence, Massachusetts Field Office Director (the director) denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a 19-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 denied the petition for failure to demonstrate that a juvenile court dependency or custody order for the petitioner was in effect at the time of filing her petition for SIJ classification. On appeal, the petitioner submits a brief reasserting her eligibility.

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 March 26, 2012, without inspection, admission, or parole. She was apprehended by U.S. Border Patrol agents at the time of her 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 her brother, [REDACTED]. On [REDACTED] 2013, the Trial Court, Probate and Family Court Department, [REDACTED] (hereinafter “juvenile court”) granted guardianship to the petitioner’s brother, Mr. [REDACTED] when the petitioner was [REDACTED] years old. See *Order Granting on Motion for Special Findings of Fact and Rulings of Law*, Trial Ct. Prob. and Fam. Ct. Dep’t., [REDACTED] 2013).

The petitioner filed this Form I-360, Petition for Special Immigrant, on September 16, 2013 when she was over the age of eighteen but under the age of twenty-one, based on the juvenile court’s findings of fact. The director subsequently issued two Requests for Evidence (RFE) because at the time of filing the petition, the petitioner had aged out of the juvenile court’s jurisdiction under Massachusetts law. The petitioner responded to the RFEs with a brief and additional evidence, which the director found insufficient and denied the Form I-360 petition. The petitioner 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

The director denied the SIJ petition because the petitioner “aged out” of the juvenile court’s jurisdiction after she turned eighteen years of age. See Mass. Gen. Law 190B § 1-201 (West 2015)(defining a minor as “a person who is under 18 years of age.”). The director determined that the petitioner was not the subject of a valid juvenile court order because the juvenile court’s guardianship order terminated by operation of law by the time the petitioner filed her Form I-360 petition. A petitioner must establish that he continues to have a valid juvenile court order that has not been vacated, terminated, or otherwise ended. 8 C.F.R. § 204.11(c)(5). However, USCIS will not deny, revoke, or terminate a SIJ petition or an SIJ-based adjustment of status application (Form I-485) if, at the time of filing the SIJ petition: (1) the petitioner is or was under

21 years of age, unmarried, and otherwise eligible; and (2) the petitioner either is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing. *Stipulation, Perez-Olano, et al. v. Holder, et. al*, Case No. CV 05-3604 (C.D. Cal. 2005)(No. 176).

Here, the juvenile court entered letters of appointment and an order regarding the minor's eligibility for special immigrant juvenile status on [REDACTED] 2013, when the petitioner was [REDACTED] years old. The petitioner subsequently filed a petition for SIJ classification several weeks later when she was [REDACTED] years old. The juvenile court order found that the petitioner's reunification with her parents was not viable due to neglect and abandonment. The order further states that it is not in the petitioner's best interest to return to Guatemala. Our review of the record demonstrates the bona fides of the petitioner's request for special immigrant juvenile classification and she had a valid dependency order that was terminated based solely on age prior to filing her SIJ petition. Accordingly, the petitioner has established her eligibility for SIJ classification pursuant to section 101(a)(27)(J) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her 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, the petitioner has shown by a preponderance of the evidence that she is eligible for the benefit.

ORDER: The appeal is sustained.