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 #:
PETITION RECEIPT #:

IN RE: Petitioner:

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 Harlingen, Texas Field Office Acting Director (the director) denied the petition. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner is a 21-year-old citizen of Mexico 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 lack of evidence of the requisite juvenile court dependency order issued in accordance with state law governing such declarations of dependency. 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[.]

*Pertinent Facts*

The record reflects that the petitioner was born in Mexico on [redacted] The petitioner claims that she entered the United States without inspection, admission, or parole on October 2, 2008 when she was [redacted] years old. On [redacted], 2014, the District Court of the [redacted]

Texas (hereinafter "juvenile court") declared the petitioner a dependent upon the juvenile court. *See Order of Dependency and Findings*, Dist. Ct. of . Tex., 2014).

The petitioner filed this Form I-360, Petition for Special Immigrant, on March 28, 2014, based on the juvenile court's findings of fact. The director subsequently issued a request for evidence (RFE) because at the time the juvenile court proceedings were initiated, the petitioner was not a minor under Texas state law. The petitioner responded with a brief, 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, does not demonstrate that the petitioner is eligible for and merits classification as a special immigrant juvenile. The petitioner's arguments do not establish her eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

*Analysis*

The director correctly determined that the petitioner did not establish that she is eligible for SIJ classification which requires that she be declared a dependent upon a juvenile court located in the United States in accordance with state law. The record shows that the petitioner was declared to be dependent upon the juvenile court. Section 101.003(a) of the Texas Family Code defines a minor as an unmarried person under 18 years of age. In certain circumstances, section 263.602 of the Texas Family Code allows for jurisdiction of the juvenile court to extend over individuals who are older than 18 if the individual "was in the conservatorship of the department on the day before the person's 18th birthday." In this case, the petitioner was years old at the time of the juvenile court proceedings and therefore was not a minor under the Texas Family Code. In addition, the juvenile court order did not cite to any exception, pursuant to section 263.602, supporting its jurisdiction.

On appeal, the petitioner asserts that the guardianship order is valid for purposes of SIJ classification because the petitioner met the definition of a child under the Act regardless of the fact that she was not a minor under Texas law. She states that her order was not brought under the Texas Family Code and but through the Declaratory Judgment Act (DJA) which allows the state's courts to expand the definition of a child. She further asserts that it is solely within the purview of a juvenile court to determine whether 18 to 21 year-olds may be declared dependent on the court and that her order is valid because she demonstrated that she suffered from parental mistreatment. However, the term "juvenile court," as used in subsection 101(a)(27)(J)(i) of the Act is defined as a court "having jurisdiction under state law to make judicial determinations about the custody and care of juveniles." *See* 8 C.F.R. § 204.11(a). Further, a dependency or custody order issued by a court with jurisdiction over both adults and juveniles will only suffice if the record shows that the court exercised jurisdiction over the petitioner as a juvenile. *See* 8 C.F.R. § 204.11(c)(3) (requiring the court order to be in compliance with state law governing juvenile court dependency). Here, the record lacks any evidence that the declaratory judgment was issued pursuant to the court's jurisdiction over the petitioner as a juvenile under state law. To the contrary, the record shows that the petitioner was already years old at the time the guardianship proceedings had been initiated. Although the petitioner asserts that the DJA allows

the state's courts to apply the federal definition of a child, i.e. an unmarried person under the age of 21, the plain language of the statute and the regulation require that the court order be issued pursuant to the court's jurisdiction over the petitioner as a juvenile under state law.

The petitioner correctly asserts that when adjudicating an SIJ petition, U.S. Citizenship and Immigration Services (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. However, as the petitioner did not establish that her dependency order met the requirements of subsection 101(a)(27)(J)(i) of the Act and the regulation at 8 C.F.R. § 204.11(c)(3), we do not reach whether the court order contained or was supplemented by specific factual findings to provide a sufficient basis for USCIS's consent.

*Conclusion*

The petitioner has not shown by a preponderance of the evidence that her request for SIJ classification contained the requisite juvenile court dependency order issued in accordance with state law governing such declarations of dependency. Consequently, the petitioner does not meet section 101(a)(27)(J) of the Act and the appeal will be dismissed.

In visa petition 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 not shown by a preponderance of the evidence that she is eligible for the benefit. Accordingly, the appeal will be dismissed.

**ORDER**: The appeal is dismissed.