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



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **MAY 07 2015**

[Redacted]

IN RE: Self-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]

INSTRUCTIONS:

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

The petitioner is a 20-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 determined that the petitioner is not eligible for SIJ classification because she did not have a qualifying custody or dependency order, and he denied the petition accordingly. On appeal, the petitioner submits a brief.

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. 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 petitioner was born in Mexico on [REDACTED]. She claims that she entered the United States without inspection in April 2008. On May 5, 2014, when the petitioner was 19

years old, the District Court of the 107th Judicial District in [REDACTED] Texas (hereinafter “district court”) declared the petitioner dependent upon the court. *In the Interest of* [REDACTED] (Dist. Ct. of [REDACTED] May 5, 2014)(Order of Dependency and Findings).

The petitioner filed this Form I-360, Petition for Special Immigrant, on May 13, 2014. The director subsequently issued a request for evidence (RFE) of the validity of the district court order because the petitioner was an adult under Texas law when the order was issued. In response to the RFE, the petitioner submitted a brief, affidavits from herself and her mother, and the underlying petition for declaratory judgment. The director reviewed the evidence and found it insufficient to establish the petitioner’s eligibility. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner’s eligibility. The petitioner’s claims do not overcome the director’s ground for denial. The appeal will remain dismissed for the following reasons.

Analysis

Qualifying Juvenile Court Order

The age of majority in Texas is eighteen years. Tex. Civ. Prac. & Rem. Code Ann. § 129.001 (West 2014). The district court’s dependency order was issued after the petitioner reached the age of majority when she was nineteen years old. *See In the Interest of* [REDACTED] (Dist. Ct. of [REDACTED] May 5, 2014). The director denied the petition because the petitioner failed to establish that the district court exercised jurisdiction over her as a juvenile, as required by 8 C.F.R. § 204.11(c)(3).

On appeal, the petitioner asserts that there is statutory authority in Texas for the extension of juvenile court jurisdiction to individuals between the ages of 18 and 21 in child support, foster care and juvenile delinquency proceedings. The petitioner contends that these examples show that the district court may exercise its authority to extend juvenile court jurisdiction over an individual until the age of 21. However, the record lacks any evidence that the district court extended its jurisdiction over the petitioner as a juvenile under any of these circumstances. The dependency order refers to the petitioner as a “juvenile,” but states that it is using that term as defined under federal immigration law, not Texas State law.

The petitioner contends in the alternative that section 101(a)(27)(J) of the Act does not require that an SIJ petitioner’s age be limited by the state’s definition of “child” and a state court is not prohibited from issuing a dependency order using the federal definition of child. A child is defined under the Immigration and Nationality Act as an unmarried person under the age of 21. Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). The term “juvenile court,” as used in section 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.” 8 C.F.R. § 204.11(a). The plain language of the statute and the regulations require that the court order be issued pursuant to the court’s jurisdiction over the petitioner as a juvenile under state law. 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). As discussed, the petitioner was an adult under Texas law at the time of the issuance of the dependency order and the district court did not indicate that it was exercising jurisdiction over the petitioner as a juvenile under Texas law.

Finally, the petitioner contends that the director conducted an impermissible *de novo* review of the facts and law underlying the dependency order. However, the record does not show that the director went behind the district court's order to make his own determination under state child welfare law. When adjudicating an SIJ petition, the director must examine the juvenile court order 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 subsections 101(a)(27)(J)(i)-(ii) of the Act. Here, the director correctly reviewed the findings of the court order and determined that the order is not qualifying because it was not issued by a juvenile court. The petitioner therefore does not meet the requirements of subsection 101(a)(27)(J)(i) of the Act as implemented by the regulation at 8 C.F.R. § 204.11(c)(3).

Conclusion

The petitioner failed to establish that she was the subject of a qualifying juvenile court dependency or custody order. Consequently, the petitioner does not meet the requirements of subsection 101(a)(27)(J)(i) of the Act and the appeal will be dismissed.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *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 and the petition will remain denied.

ORDER: The appeal is dismissed.