



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 26 2015**

FILE #:
PETITION RECEIPT #:



IN RE: Self-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:



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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The [REDACTED], Ohio 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 21-year-old citizen of Mexico who seeks classification as a special immigrant juvenile (SIJ) pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4). The director initially approved the petition, but subsequently revoked that approval on notice because the court order upon which the petition was based lacked the requisite nonviability-of-reunification determination. 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. 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 and Procedural History

The petitioner was born on [REDACTED] in Mexico and claims that he entered the United States on October 1, 1995 without inspection or admission. Court records show that in

the petitioner was arrested and charged in Ohio with two counts of illegal conveyance or possession of a deadly weapon into a school safety zone and two counts of carrying concealed weapons. On , a magistrate in the Court of Common Pleas of County, Ohio (hereinafter "juvenile court") found the petitioner to be a delinquent minor for having committed one count of carrying concealed weapons, a felony of the fourth degree, and one count of carrying concealed weapons, a misdemeanor of the first degree, and placed him on probation until .

The record shows that on , the petitioner appeared before a magistrate in the juvenile court for a hearing on a motion for alternative disposition related to SIJ findings. Although the petitioner did not submit the court records related to his second arrest, the magistrate's decision reflects that on , the petitioner was charged with three counts of felonious assault with three gun specifications, felonies of the second degree. On the petitioner entered admissions to all three counts and in exchange for the pleas the state withdrew its request that he be tried in the adult court system. He was committed as a delinquent minor to the legal custody of the Ohio Department of Youth Services (ODYS), the juvenile corrections system in Ohio, for an indefinite term, not to exceed his 21st birthday. He was in addition ordered to consecutively serve a three-year and fourth-month term for the possession or use of a firearm.

The magistrate determined that the petitioner is under the custody of ODYS and it is not in his best interest to return to Mexico. The magistrate, however, specifically declined to make the nonviability-of-reunification determination. *See In the Matter of* , No. , decision at 2 (County C.P. (Magistrate's Findings of Fact and Conclusions of Law). The petitioner filed this Form I-360 on January 27, 2014 based on the magistrate's findings of fact and the director initially approved the petition. On June 11, 2014, the director issued a notice of intent to revoke (NOIR) approval of the Form I-360 SIJ petition because the juvenile court order lacked the requisite nonviability-of-reunification determination. The petitioner responded to the NOIR with a brief, which the director found insufficient to overcome the intended basis of denial. The director revoked approval of the Form I-360 petition on July 22, 2014 and the petitioner has 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.

Analysis

On [REDACTED], the juvenile court entered an order containing the following findings:

With respect to the first requested finding, the court finds [the petitioner] was legally committed to ODYS by the [REDACTED] County juvenile court and further finds that ODYS is a department of the State of Ohio as contemplated by the statute.

As to the second finding requested by [the petitioner], that reunification with one or both parents is not viable due to neglect, abuse, abandonment or similar basis, the court finds that reunification is not viable currently because the child is in the custody of the state for committing serious delinquent acts. The child argues he was abandoned by his father but that is not why he is in his current placement. . . . Thus the court is not able to find the child is placed due to neglect, abuse or abandonment. Additionally, pursuant to Ohio law, [REDACTED] has reached the age of emancipation. At the time of the juvenile court hearing he was nineteen years old. Under Ohio law he is an adult responsible for his own care and maintenance upon his release from ODYS.

Regarding the third finding requested by the child, namely that it is not in his best interests to return to his parents' prior country of nationality, the court finds [the petitioner] has no significant connections to Mexico and that indeed it would not be in his best interests to return to a country where he has not lived since he was two years old.

In the Matter of [REDACTED] No. [REDACTED], decision at 2.

The director found that the juvenile court declined to find that the petitioner's reunification with one or both of his parents was not viable due to abuse, neglect, abandonment because at the time of the juvenile court hearing the petitioner was nineteen years old and considered an adult under Ohio law. On appeal, the petitioner asserts that he continues to be considered a child under Ohio law and under the jurisdiction of ODYS until he turns 21 years old because the juvenile court determined that he is a "delinquent child." The petitioner correctly observes that the director erred in her interpretation of the juvenile court's order. The juvenile court stated that "[u]nder Ohio law [the petitioner] is an adult responsible for his own care and maintenance upon his release from ODYS." *In the Matter of* [REDACTED] No. [REDACTED] decision at 2. The petitioner, however, was not at the time of the hearing released from ODYS. He instead remained under the custody of ODYS as a child under Ohio law. *See* Ohio Rev. Code § 2151.011(B)(6)(defining the term *child* as "a person who is under eighteen years of age, except that the juvenile court has jurisdiction over any person who is adjudicated an unruly child . . . and, for the purposes of that jurisdiction related to that adjudication, a person who is so adjudicated an unruly child shall be deemed a 'child' until the person attains twenty-one years of age.").

Nonetheless, there is no error in the director's finding that the juvenile court failed to make the requisite nonviability-of-reunification determination. The juvenile court found that "[r]eunification is not viable currently because the child is in the custody of the state for committing serious delinquent acts. The child argues he was abandoned by his father but that is

not why he is in his current placement. . . . Thus the court is not able to find the child is placed due to neglect, abuse or abandonment.” See *In the Matter of* [REDACTED], No. [REDACTED], decision at 2. On appeal, the petitioner asserts that the statute does not contain any requirement that a child’s placement be related to his or her dependency, abuse or neglect. He states that the statute instead focuses on the reason that reunification is not viable; and in this case the court’s findings show that reunification with his father is not viable due to abandonment as that term is defined under Ohio law.

The petitioner’s request that we consider his circumstances to fall under the definition of abandonment in Ohio law is outside our purview in these proceedings. USCIS is not the fact finder in regards to issues of child welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. See Sections 101(a)(27)(J)(i)-(ii) of the Act (referencing the determinations of a juvenile court or other administrative or judicial body). Here, the juvenile court stated that reunification with the petitioner’s parents is not viable because the petitioner is in custody of the state for committing serious delinquent acts, and more importantly, specifically declined to make a determination on abandonment by the petitioner’s father. See *In the Matter of* [REDACTED], No. [REDACTED], decision at 2. We are not in the position to find that the petitioner was abandoned by his father as that determination is under the jurisdiction of the juvenile court. Since the juvenile court order does not contain the requisite nonviability-of-reunification determination, it is deficient under section 101(a)(27)(J)(i) of the Act.

Conclusion

The petitioner failed to establish that he was the subject of a qualifying juvenile court dependency or custody order. Consequently, the petitioner is not described at subsection 101(a)(27)(J)(i) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his 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.

ORDER: The appeal is dismissed. Approval of the petition remains revoked.