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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, ILLINOIS

Date:

MAR 04 2010

IN RE:

[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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the special immigrant visa 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 native and citizen of India 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 denied the petition for SIJ classification finding that the petitioner was not eligible for the benefit sought because she failed to satisfy the requirements set forth in section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J). *See Decision of the Director*, dated Oct. 1, 2009. On appeal, the petitioner contends through counsel that she meets all of the statutory eligibility requirements for SIJ classification under the Act, as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). *See Form I-290B, Notice of Appeal*, dated Oct. 30, 2009; *Brief on Appeal*.

The record contains, *inter alia*, copies of the petitioner's Indian birth certificate and Illinois Record of a Foreign Birth; a copy of her birth father's death certificate; a Petition for Related Adoption, filed with the Circuit Court of the Eleventh Judicial Circuit, in McLean County, Illinois (hereinafter juvenile court) on December 3, 2003; an Interim Order, filed by the juvenile court on January 5, 2004; a Judgment for Adoption, filed by the juvenile court on January 26, 2004; an Amended Judgment for Adoption, filed by the juvenile court on September 2, 2004; an Amended Judgment for Adoption, filed by the juvenile court on December 28, 2009; a statement by the petitioner; several declarations in support of the petitioner; Indian country conditions information; and a Brief on Appeal. The entire record was considered in rendering a decision on the appeal.

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. On December 23, 2008, the TVPRA was enacted. *See* Pub. L. No. 110-457, 122 Stat. 5044 (2008). Section 235(d) of the TVPRA amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). *Id.*; *see also* Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs., et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009) (hereinafter *TVPRA – SIJ Provisions Memo*).¹ The SIJ provisions of the TVPRA are applicable to this proceeding. *See* Section 235(h) of the TVPRA (stating that the TVPRA shall take effect 90 days after the December 23, 2008 date of enactment, and “shall also apply to all aliens in the United States in pending proceedings before the Department of Homeland Security” on that date).

Section 101(a)(27)(J) of the Act, as amended by section 235(d) of the TVPRA, describes a “special immigrant” as:

¹This memo is available at http://www.uscis.gov/files/nativedocuments/TVPRA_SIJ.pdf

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[.]

The TVPRA amended the SIJ definition by expanding the group of aliens eligible for SIJ classification to include aliens who have been placed under the custody of “an individual or entity appointed by a State or juvenile court located in the United States.” See TVPRA section 235(d)(1)(A). Second, the TVPRA removed the need for a juvenile court to deem a juvenile eligible for long-term foster care due to abuse, neglect, or abandonment, and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. See TVPRA section 235(d)(1)(A).² Third, the TVPRA provides age-out protection to SIJ petitioners so that after December 23, 2008, a petition for SIJ status may not be denied based on age “if the alien was a child on the date on which the alien applied for such status.” TVPRA section 235(d)(6). U.S. Citizenship & Immigration Services (USCIS) interprets the use of the term “child” in the TVPRA to refer to “an unmarried person under 21 years of age.” *TVPRA – SIJ Provisions Memo* at 3.

² USCIS has long defined “eligible for long-term foster care” to mean “that a determination has been made by the juvenile court that family reunification is no longer a viable option.” See 8 C.F.R. § 204.11(a) (1993).

Additionally, the TVPRA modified the two forms of consent—formerly “express” consent and “specific” consent—required for SIJ petitions. First, instead of “expressly consent[ing] to the dependency order serving as a precondition to the grant of special immigrant juvenile status,” the new definition requires the Secretary of Homeland Security, through the USCIS District Director, to “consent[] to the grant of special immigrant juvenile status.” TVPRA section 235(d)(1)(B). This consent determination “is an acknowledgement that the request for SIJ classification is bona fide,” *TVPRA – SIJ Provisions Memo* at 3, meaning that neither the dependency order nor the best interest determination was “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,” H.R. Rep. No. 105-405 at 130 (1997); *see also* 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* (May 27, 2004) at 2 (hereinafter *SIJ Memo #3*).³ “An approval of an SIJ petition itself shall be evidence of the Secretary’s consent.” *TVPRA – SIJ Provisions Memo* at 3. Second, the TVPRA transferred the “specific consent” function, which applies to certain juveniles in federal custody, from the Secretary of Homeland Security, as previously delegated to U.S. Immigration and Customs Enforcement, to the Secretary of Health and Human Services. TVPRA section 235(d)(1)(B).

The record reflects that the petitioner was born on September 1, 1988, in India. *See Birth Certificate for* [REDACTED]. On July 19, 2002, the petitioner’s birth father was killed in an accident in Tennessee. *See Death Certificate for* [REDACTED]. After entering the United States without being inspected and admitted on September 25, 2003, the petitioner was apprehended and placed in removal proceedings. *See Notice to Appear*, dated Sept. 26, 2003. The petitioner failed to attend her removal hearing, and the immigration judge issued an in absentia order of removal on January 13, 2004. *See Order of the Immigration Judge*.⁴

On December 3, 2003, [REDACTED] and [REDACTED], petitioner’s maternal uncle and his wife, filed a petition with the juvenile court, seeking to adopt the petitioner. *See Petition for Related Adoption*. The juvenile court made the petitioner a ward of the court during the pendency of the adoption proceedings, and gave temporary custody of the petitioner to her uncle and aunt. *See Interim Order*. On January 26, 2004, the juvenile court granted the adoption petition and terminated the parental rights of the petitioner’s birth mother because she surrendered these rights in open court. *See Judgment for Adoption*. The juvenile court held that “from this date forward the [petitioner] shall be, for all legal intents and purposes the child of the petitioners [REDACTED] and [REDACTED]” *Id.* The petitioner’s adoptive father and mother are listed as her parents on her Record of a Foreign Birth, filed by the Illinois Department of Public Health, Division of Vital Records, on March 23, 2004. *See Record of a Foreign Birth*. The juvenile court filed an amended judgment on September 2, 2004, to correct the petitioner’s birth date. *See Amended Judgment for Adoption*.

³ SIJ Memo #3 is available at http://www.uscis.gov/files/pressrelease/SIJ_Memo_052704.pdf.

⁴ The petitioner was convicted of illegal entry under section 275(a)(1) of the Act, 8 U.S.C. § 1325(a)(1), by the U.S. District Court for the Northern District of New York. *See United States v.* [REDACTED] (Judgment Oct. 29, 2003).

The petitioner's adoptive parents filed a Petition for Alien Relative (Form I-130) on her behalf, which USCIS approved on October 3, 2006. The immigration court granted the petitioner's motion to reopen her in absentia order of removal on October 20, 2008. *See Order of the Immigration Judge.*

The petitioner filed a Petition for Special Immigrant (Form I-360) on August 27, 2009, five days before her 21st birthday. *See Form I-360.* The director determined that the petitioner did not meet the requirements for SIJ classification, and denied the petition on October 1, 2009. After filing a timely Notice of Appeal, the petitioner submitted to the AAO an amended judgment for adoption which was filed by the juvenile court on December 28, 2009. *See Amended Judgment for Adoption.* The juvenile court amended the adoption judgment to include a finding that the petitioner "was neglected and abandoned by her parents and she would suffer extreme hardship if she was deported." *Id.* The juvenile court issued the order "nunc pro tunc back to September 2, 2004," the date of the petitioner's first amended judgment for adoption. *Id.*

The petitioner correctly contends that the director failed to adjudicate this case under the Act as amended by the TVPRA. Because the juvenile court placed the petitioner under the custody of court-appointed individuals [REDACTED] and [REDACTED], *see Amended Judgment for Adoption*, dated Sep. 2, 2004, she meets the requirement under section 101(a)(27)(J)(i) of the Act.

However, the record shows that the petitioner did not meet all of the requirements for SIJ classification at the time she filed her petition on August 27, 2009. At that time, the petitioner did not have a judicial court finding that reunification with one or both of her parents was not viable due to abuse, neglect, abandonment, or a similar basis found under State law, and she did not have a determination in administrative or judicial proceedings that it would not be in her best interest to be returned to India. *See* section 101(a)(27)(J)(i) and (ii) of the Act. That the petitioner was able to obtain an amended juvenile court order with the required findings on December 28, 2009, after filing this appeal, is of no moment. A petition may not be granted if the petitioner cannot demonstrate eligibility for the benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1) ("An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition.").

Moreover, although the TVPRA modified the former "express" consent requirement, USCIS must still determine whether the request for SIJ classification is bona fide, or whether the evidence shows that the petitioner sought juvenile court intervention "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." *SIJ Memo #3, supra* at 2. Here, the record indicates that a grant of SIJ classification is not warranted based on a finding that the petitioner's request for SIJ classification was sought primarily for the purpose of obtaining immigration status in the United States. Specifically, the petitioner was adopted by her uncle and aunt in 2004, and the juvenile court found [REDACTED] and [REDACTED] to be the petitioner's parents for all purposes. *Amended Judgment for Adoption*, dated Sep. 2, 2004; *see also Record of a Foreign Birth.* There is no evidence that the petitioner was subjected to abuse, neglect, or abandonment while in the care of her adoptive parents. The petitioner's adoptive parents filed a relative visa petition on her behalf, which USCIS approved

in 2006. *See Form I-797, Notice of Action*, dated Oct. 3, 2006. After the petitioner learned that she would not be able to adjust her status in the United States and would have to return to India for consular processing, the petitioner filed a petition for SIJ classification. *See Statement of the Petitioner*. The petitioner sought and obtained an amended judgment for adoption from the juvenile court on December 28, 2009, after the USCIS director determined that the petitioner did not meet the requirements for SIJ classification.

Here, a preponderance of the evidence indicates that SIJ classification and the juvenile court's amended judgment 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." *SIJ Memo #3, supra* at 2.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the petitioner has not proven eligibility for the benefit sought.

ORDER: The appeal is dismissed.