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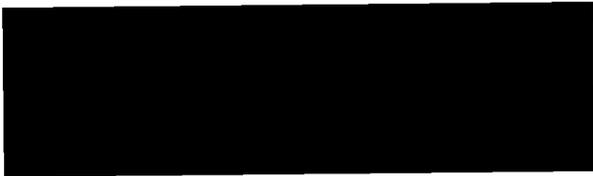
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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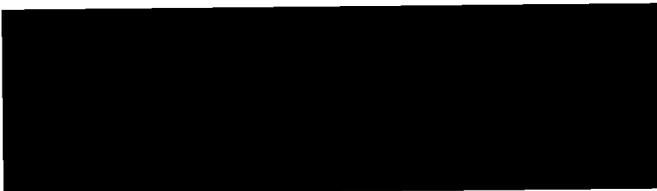
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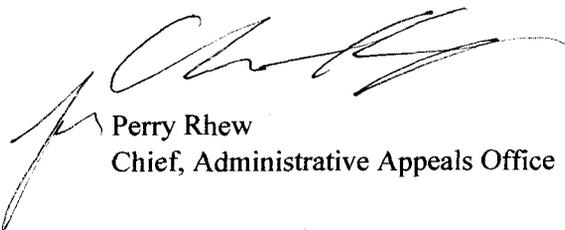
PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is an 18-year-old native and citizen of El Salvador 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 District Director determined that the evidence did not support the juvenile court's finding of abandonment, and denied the petition for SIJ classification accordingly. *See Decision of the District Director*, dated Nov. 5, 2009. On appeal, the petitioner contends through counsel that the District Director erred in denying his petition for SIJ classification. *See Form I-290B, Notice of Appeal*, filed Dec. 2, 2009. Specifically, the petitioner contends that he meets all of the requirements to be classified as a special immigrant juvenile. *See Brief on Appeal*.

The record contains, *inter alia*, a copy of the petitioner's birth certificate; an Office of Refugee Resettlement Verification of Release Form, dated September 29, 2007; a Petition for Guardianship of the Person of a Minor, dated March 10, 2008; a Statement and Consent of [REDACTED] Argueta in support of the Guardianship Petition; an Affidavit of [REDACTED] the petitioner's guardian, in support of the Guardianship Petition; an Order to Show Cause why the Petition for Guardianship should not be granted, filed by the Circuit Court for Montgomery County, Maryland (hereinafter "juvenile court") on March 17, 2008; a Motion and an Order for Alternative Service of the Notice to Interested Persons, filed by the juvenile court on March 17, 2008; a transcript of the hearing before the juvenile court on May 13, 2008; an Order Appointing Guardian of the Person of a Minor, issued by the juvenile court on May 13, 2008; a Memorandum of Findings and Order of the Court, issued by the juvenile court on May 13, 2008; Petitioner's Response to the District Director's Notice of Intent to Deny, dated August 27, 2008; and a Brief on Appeal.

The AAO reviews these proceedings de novo. *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). The entire record was reviewed and 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, 8 U.S.C. § 1101(a)(27)(J). On December 23, 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (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 appeal. See Section 235(h) of the TVPRA (stating that the TVPRA shall “apply to all aliens in the United States in pending proceedings before the Department of Homeland Security” on December 23, 2008).

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

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.” TVPRA section 235(d)(1)(A). The TVPRA also 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

¹ This memorandum is available at http://www.uscis.gov/files/natedocuments/TVPRA_SIJ.pdf.

basis found under state law. *See id.*² In addition, the TVPRA provided 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). 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.

The record reflects that the petitioner was born on February 5, 1992, in Morazan, El Salvador. The petitioner was apprehended by a U.S. Border Patrol Agent on August 15, 2007, and he was served with a Notice to Appear for removal proceedings. At the time of his apprehension, the petitioner stated that his parents lived in Maryland, and that he planned to contact his father after arriving in the United States. On September 29, 2007, the petitioner was released from the custody of the Office of Refugee Resettlement’s Division of Unaccompanied Children’s Services into the care and custody of his uncle [REDACTED]

On March 10, 2008, the petitioner’s uncle filed a petition with the juvenile court requesting that he be appointed as the petitioner’s guardian. *See Petition for Guardianship of the Person of a Minor*. The guardianship petition indicated that the petitioner was abandoned by his mother when he was two years old, and that he has had no contact with her since that time. *Id.* The petition also indicated that the petitioner had not seen his father since he was seven years old, but maintained occasional phone contact with him until some time in 2007. *Id.*; *see also Statement and Consent of [REDACTED]*. The petitioner stated that he traveled to the United States in search of family members, but that he has been unable to locate his father. *See Statement and Consent of [REDACTED] Affidavit of [REDACTED] Transcript of Juvenile Court Hearing*. The petitioner’s uncle stated that he has no idea as to the whereabouts of the petitioner’s parents, and that the parents have had no contact with the petitioner since he has been in the uncle’s care. *Affidavit of [REDACTED] see also Motion for Alternative Service*.

On May 13, 2008, the juvenile court determined that neither parent of the petitioner was serving as a guardian, and appointed [REDACTED] as the petitioner’s guardian. *See Order Appointing Guardian of the Person of a Minor*. The juvenile court also found that the petitioner was “eligible for long-term foster care due to abandonment by both of his parents within the meaning of Section 101(a)(27)(J) of the Immigration and Nationality Act,” and that it would not be in the petitioner’s best interest to be returned to El Salvador. *Memorandum of Findings and Order of the Court*. The petitioner filed his Petition for Amerasian, Widow or Special Immigrant (Form I-360), on May 18, 2008, when he was 16 years old.

Upon review, the AAO determines that the petitioner has established eligibility for SIJ classification under section 101(a)(27)(J) of the Act, as amended by the TVPRA. First, section 101(a)(27)(J)(i) of the Act pertains to an individual “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

² U.S. Citizenship and Immigration Services (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).

agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States.” Here, the petitioner was placed under the custody of an individual appointed by the juvenile court, satisfying section 101(a)(27)(J)(i) of the Act.

Second, the Act, as amended by the TVPRA, requires a finding that the petitioner’s reunification with one or both of her parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. At the time the juvenile court issued its order, the former statutory provision required the juvenile court to deem the petitioner eligible “for long-term foster care due to abuse, neglect, or abandonment,” Former section 101(a)(27)(J)(i) (1998), and the regulations 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,” 8 C.F.R. § 204.11(a) (1993). Here, the juvenile court determined that the petitioner was “eligible for long-term foster care due to abandonment by both of his parents.” Accordingly, the juvenile court made the requisite findings of abandonment and non-viability of family reunification.

Third, the juvenile court determined that it would not be in the petitioner’s best interest to be returned to his previous country of nationality or last habitual residence. *See Memorandum of Findings and Order of the Court*. Accordingly, the petitioner satisfies the best interest requirement set forth in section 101(a)(27)(J)(ii) of the Act.

Although the District Director believed that there was insufficient evidence to support the juvenile court’s findings, the preponderance of the evidence in the record indicates that the petitioner is eligible for SIJ classification. First, the hearing transcripts and the other evidence in the record support the juvenile court’s finding of parental abandonment. *See Petition for Guardianship of the Person of a Minor; Statement and Consent of [REDACTED]; Affidavit of [REDACTED]; Transcript of Juvenile Court Hearing; Motion and Order for Alternative Service; Verification of Release*. Second, the juvenile court was informed that the petitioner’s relatives in El Salvador could no longer care for him, *see Affidavit of [REDACTED]; Transcript of Juvenile Court Hearing*, and the petitioner was not required to demonstrate that he was abused or abandoned by his grandmother in El Salvador, as the District Director indicated. Third, the border patrol agent’s notation that the petitioner did not have a “credible fear” of persecution in El Salvador is not relevant to the petitioner’s eligibility for SIJ classification. Fourth, the petitioner’s intent to reunite with his parents in Maryland, his statement that his father made his travel arrangements, and the border patrol agent’s statement that he made telephone contact with the petitioner’s father, are not necessarily inconsistent with the evidence in the record that the petitioner has since been unable to locate his father in the United States. Finally, the petitioner is not required to show that the juvenile court terminated parental rights or that the guardianship appointment was irrevocable.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the petitioner to establish eligibility for the benefit sought. Here, the petitioner has shown by a preponderance of the evidence that he is eligible for SIJ classification. Accordingly, the appeal will be sustained, the District Director’s decision will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained. The November 5, 2009 decision of the District Director is withdrawn and the petition is approved.