



U.S. Citizenship
and Immigration
Services

C6

[REDACTED]

Date: **OCT 15 2012** Office: ATLANTA, GA File: [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 please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Atlanta, Georgia Field Office Director (the director), denied the special immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 20-year-old citizen of Mexico who seeks classification as a special immigrant juvenile (SIJ) as defined at section 101(a)(27)(J) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(27)(J), and pursuant to section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4). The director denied the petition for lack of evidence of the requisite juvenile court determinations that the petitioner's reunification with one or both of her parents was not viable due to abuse, neglect, abandonment or a similar basis under state law; and that it was not in her best interest to be returned to Mexico. On appeal, counsel submits a two-page memorandum of law reasserting the petitioner's eligibility.

Applicable Law

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles, defined in section 101(a)(27)(J) of the Act 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 applicant was born in Mexico on November 23, 1991. On September 27, 2010, the petitioner's paternal uncle filed a petition for guardianship of the petitioner with the [REDACTED] Alabama Probate Court (juvenile court). The guardianship petition stated that the petitioner's "Father has already been required to abandon his minor child and leave the country; the minor's Mother is subject to removal at any time," but that the petitioner was residing under the care and custody of her mother. The guardianship petition also asserted that "[t]he welfare and best interest of the minor will be served by the appointment of [the petitioner's uncle] as guardian." On the same date, the petitioner's mother filed a Consent or Relinquishment of Minor for Guardianship in which she attested to her consent to her brother's guardianship over the petitioner. On October 14, 2010, the juvenile court appointed the petitioner's uncle as her guardian.

The petitioner filed this Form I-360 on February 24, 2011 when she was 19 years old. The director subsequently issued a request for evidence (RFE) that the guardianship order was still in effect at the time the Form I-360 petition was filed and evidence that the juvenile court made the requisite non-viability and best-interest determinations. Counsel responded to the RFE with additional evidence which the director found insufficient to establish the petitioner's eligibility for SIJ classification. The director denied the petition and counsel timely appealed.

On appeal, counsel asserts that under the pertinent provisions of Alabama law, the petitioner's guardianship order establishes her eligibility for SIJ classification. On the Form I-290B, Notice of Appeal, which counsel dated August 28, 2011, counsel stated that he would file a brief with the AAO within 30 days. To date, over a year later, the AAO has received no further brief or additional evidence from counsel. Counsel's claims in the two-page memorandum submitted with the Form I-290B fail to establish the petitioner's eligibility for SIJ classification and the appeal will be dismissed for the following reasons.

Analysis

The relevant evidence fails to establish that the juvenile court found that the petitioner's reunification with one or both of her parents was not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required for SIJ classification by subsection 101(a)(27)(J)(i) of the Act. In the guardianship order, the juvenile court found that the petitioner was "a minor, and that a guardian should be appointed for her care and well-being," but the order states no specific basis for its finding. The record contains no other evidence that the juvenile court determined that parental reunification was not viable due to abuse, neglect or abandonment.

The record also lacks any evidence that the juvenile court determined that it was not in the petitioner's best interest to return to her and her parents' previous country of nationality or residence, Mexico, as required by subsection 101(a)(27)(J)(ii) of the Act. On appeal, counsel asserts that under section 26-2A-75 of the Alabama Code, the juvenile court made the requisite best-interest determination. That provision allows for court appointment of a guardian if, among other requirements, "the welfare and best interest of the minor will be served." Ala. Code at § 26-2A-75(c) (2012). Counsel cites no definition of "best interest of the minor" as used in the

Alabama Code and the record contains no evidence that the juvenile court in this case determined that it would not be in the petitioner's best interest to be returned to Mexico.

Beyond the director's decision, the petitioner is also ineligible for SIJ classification because the guardianship order had already been terminated at the time her Form I-360 was filed.¹ The law requires that the petitioner be the subject of a juvenile court dependency or custody order in effect when the Form I-360 is filed. Section 101(a)(27)(J)(i) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(c)(5). Under the Alabama Code, a guardianship appointment will terminate "upon the minor's . . . attainment of majority." Ala. Code at § 26-2A-79 (2012). The age of majority in Alabama is 19. *Id.* at § 26-1-1(a). In this case, the petitioner turned 19 on November 23, 2010, three months before she filed her Form I-360 on February 24, 2011. Accordingly, the petitioner's guardianship had terminated before her Form I-360 was filed and she was not the subject of a valid custody or dependency order in effect at the time of filing, as required by subsection 101(a)(27)(J)(i) of the Act.

On appeal, counsel cites a U.S. Citizenship and Immigration Services (USCIS) policy memorandum regarding age-out protections afforded to SIJ petitioners pursuant to the settlement agreement in *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. 2005). The settlement agreement prevents USCIS from denying or revoking the approval of certain SIJ petitions based on age or dependency status if the petitioner was under 21 years of age and the subject of a valid juvenile court dependency order at the time the petition was filed. *Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement*, USCIS Policy Memo. PM-602-0034 (Apr. 4, 2011). The settlement agreement prevents denial of an SIJ petition because the dependency order was later terminated due to the petitioner's age. *Id.* at 2. However, this age-out protection only applies to those petitioners who were the subject of a valid dependency order at the time they filed the Form I-360. *Id.* In this case, the petitioner's guardianship order had already terminated before she filed her Form I-360 because she had turned 19, the age of majority in Alabama.

Conclusion

The record fails to demonstrate that any juvenile court dependency or custody order was in effect at the time this petition was filed. The juvenile court order also lacks the requisite determinations of the non-viability of parental reunification and that it is not in the petitioner's best interest to be returned to Mexico. Consequently, the petitioner does not meet subsections 101(a)(27)(J)(i) and (ii) 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 Chawathe*, 25

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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.