



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



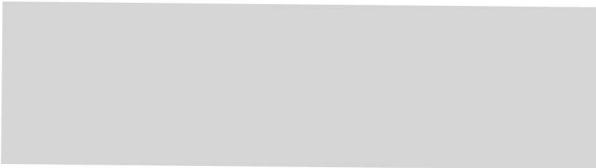
Date: APR 30 2015

FILE #: [REDACTED]  
PETITION RECEIPT #: [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:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Charlotte, North Carolina Field Office Director (the “director”) denied the special immigrant visa petition. The matter is now before the AAO upon certification of the director’s adverse decision. The decision of the director will be withdrawn, and the petition will be approved.

The petitioner is a 13-year-old citizen of Honduras 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 was not eligible for SIJ classification because the record did not provide a reasonable factual basis for the juvenile court’s dependency order, and he denied the petition accordingly. On certification of the director’s adverse decision, the petitioner asserts that she provided evidence of specific factual findings that support a reasonable basis for the juvenile court’s dependency order.

*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[.]

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through a U.S. Citizenship and Immigration Services (USCIS) Field Office Director, to consent to the grant of special immigrant juvenile status. This consent determination “is an acknowledgement that the request for SIJ classification is bona fide,” meaning that neither the dependency order nor the best interests determination 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.” 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*, at 2 (May 27, 2004)(quoting H.R. Rep. No. 105-405 at 130 (1997)).

#### *Pertinent Facts*

The record reflects that the petitioner was born in Honduras on [REDACTED] 2000 and she entered the United States without inspection from the Mexican border on or about July 1, 2013. She was apprehended by U.S. Border Patrol at the time of her entry in [REDACTED] Texas and issued a Notice to Appear in removal proceedings. The petitioner was taken into custody of the Office of Refugee Resettlement (ORR) and placed at the [REDACTED] facility in [REDACTED] Texas.

On September 25, 2013, the District Court of the [REDACTED] in [REDACTED] Texas (hereinafter “juvenile court”) declared the petitioner a dependent upon the juvenile court. *Order of Dependency and Findings*, [REDACTED] Tex., No. [REDACTED] (September 25, 2013). The petitioner filed this Form I-360, Petition for Special Immigrant, on September 30, 2013. On October 23, 2013, the petitioner was transferred to an ORR facility in [REDACTED] Virginia. The [REDACTED] Immigration Court terminated removal proceedings against the petitioner on December 10, 2013.<sup>1</sup>

The director issued two notices of intent to deny (NOIDs) the petitioner’s Form I-360 SIJ petition because the record lacked evidence of the facts supporting the juvenile court’s dependency order. The petitioner responded to both NOIDs with additional evidence which the director found insufficient to establish eligibility. On August 20, 2014, the director denied the petition and certified his decision to the AAO for review.<sup>2</sup>

On certification, the petitioner submits a brief and additional evidence. The petitioner asserts that the evidence in the record shows that her father was killed before she was born, she was neglected and abandoned by her mother, she does not have caretakers in Honduras who can provide care or protection, and it is not in her best interest to return to Honduras.

<sup>1</sup> On December 13, 2013, the petitioner was released from ORR custody and moved into her uncle’s residence in [REDACTED] North Carolina. *See Petitioner’s Brief in Response to Notice of Certification*.

<sup>2</sup> On September 23, 2014, the petitioner, through counsel, submitted a Notice of Appeal (Form I-290B) for the denial of her Form I-360 SIJ petition. We notified the petitioner that her appeal is moot because on certification we withdrew the director’s adverse decision and approved the petition.

*Analysis*

When adjudicating a petition for special immigrant juvenile status, USCIS examines the juvenile court order to determine if the order contains the requisite findings of dependency or custody; nonviability of family reunification due to parental abuse, neglect or abandonment; and the best-interest determination, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. 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. Section 101(a)(27)(J)(i)-(ii) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (referencing the determinations of a juvenile court or other administrative or judicial body).<sup>3</sup> Accordingly, USCIS examines the relevant evidence only to ensure that the record contains a reasonable factual basis for the court's order. Court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS's consent. Orders lacking specific factual findings are insufficient to warrant the agency's consent and must be supplemented by other relevant evidence demonstrating the factual basis for the court's order.<sup>4</sup>

On September 25, 2013, the juvenile court entered an order containing the following findings:

6. [The petitioner], a child the subject of this suit has been subjected to parental abuse and/or neglect as those terms are defined under Chapter 261.001(4) of the Texas Family Code, and/or abandonment as such term is defined under Chapter 152.102 of the Texas Family Code.
7. That family reunification with one or more parents is not a viable option due to abuse, neglect, abandonment, or a similar basis found under State law.
8. That . . . [the petitioner] is dependent upon this juvenile court in accordance with the laws of the State of Texas.
9. That it is not in [the petitioner's] . . . best interest to be returned to her or her parents' previous country of nationality or country of last habitual residence.

*Order of Dependency and Findings (September 25, 2013).*

The juvenile court order states that one or both of the petitioner's parents subjected her to "parental abuse and/or neglect . . . and/or abandonment," but it does not specify which of these three circumstances the juvenile court determined existed in the petitioner's case. The best

<sup>3</sup> See *Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, 4-5 (May 25, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

<sup>4</sup> *Id.* at 5; See also *Special Immigrant Juvenile Petitions*, 76 Fed. Reg. 54978, 54981, 54985 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11).

interest determination also contains no specific factual details upon which the finding was made. However, other documentation in the record from the juvenile court proceedings shows a reasonable basis for the court's order. The underlying petition for declaratory judgment filed with the juvenile court contains the following facts:

The child has been neglected and abandoned by her mother. The child's father was killed before she was born. The child's caretakers are elderly and cannot protect her or provide economic support. The child does not have a stable place to live. This child seeks a declaration from this Court of her status as an abused, neglected or abandoned child for whom reunification with one or more parents is not viable.

*Original Petition for Declaratory Judgment* at page 3, filed August 27, 2013.

The petitioner's attorney from her juvenile court proceedings stated that during the dependency hearing the petitioner provided the court with oral testimony and a written declaration in which she testified that her father was killed before her birth, her mother abandoned her and she does not have a safe place to live in Honduras. *Affidavit of* [REDACTED] dated June 13, 2014. The record contains the petitioner's birth certificate and her father's death decree. The dependency order shows that the petitioner appeared in person and testified before the court. *See Order of Dependency and Findings*, [REDACTED] Tex., No. [REDACTED] (September 25, 2013). While we do not have a written transcript of the petitioner's oral testimony before the court, the petitioner in the affidavit she filed with the juvenile court provided the following account:

2. My father's name was [REDACTED]. They killed him when my mother was one-month pregnant with me. When my father was killed, they also killed my grandmother's husband and her other sons. I am not sure who the killers were. They were like the enemy, like gang members. . . .
3. My family tells me that my mother's name was [REDACTED]. She abandoned me when I was one-and-a-half years old. I was raised by my grandmother, the mother of my father. I call her mama. . . . They say my mother lived in my grandmother's house with us until I was one-and-a-half, but I don't remember. They told me that my mother left and never came back. I have never heard from her.
4. After the murders, my grandmother had to move. She had to go to [REDACTED]. . . . Where she is living now, there are gang members, and they make young girls sell drugs. . . .
5. My grandmother is 67 years old. My great-grandmother lived with us, too. She is 112 years old. She is blind and deaf, and my grandmother has to take care of her. Neither my grandmother nor great-grandmother can work. Because my grandmother and great-grandmother cannot work, my uncle in the U.S. supported us.
6. I left Honduras because it is just too dangerous to live – there are too many rapes and murders. I have heard that the gangs kidnap girls and make them sell drugs. Also, my

grandmother and great-grandmother can no longer take care of me. I do not have a safe place to live or people who can care for me in Honduras.

*Affidavit of* [REDACTED], dated September 10, 2013.

*De novo* review of the record shows that the juvenile court order was issued upon the petitioner's affidavit and testimony in which she stated that her father was murdered, her mother abandoned her and her elderly grandmother cannot provide her a stable place to live and protect her from violence in Honduras. Other supporting evidence in the record includes the death certificate of the petitioner's father, the petitioner's birth certificate, and while it was not relied upon in the court's decision, a declaration from the petitioner's paternal grandmother in which she reiterated that the petitioner's father was killed, her mother abandoned her and she faces violence and instability if she continues to reside in Honduras. *See Declaration of* [REDACTED] dated October 21, 2014. The record also contains an affidavit from [REDACTED] a paralegal with the [REDACTED], who stated that she conducted the initial intake and follow-up screening session with the petitioner when she was in ORR custody at the [REDACTED]. Ms. [REDACTED] recounted that during these sessions she learned about the petitioner's mother's abandonment and her father's death. Ms. [REDACTED] stated that when she contacted the petitioner's paternal grandmother in Honduras and uncle who resides in the United States she obtained information consistent with the petitioner's statements. *Affidavit of* [REDACTED], dated October 20, 2014.

Finally, the director determined that the record reflects that the petitioner was questioned when she was apprehended by Border Patrol on July 1, 2013 and during the interview the petitioner stated that her mother and father reside in [REDACTED] Honduras. On appeal, the petitioner asserts that she was only 12 years old at the time she was apprehended by border patrol and the manner and type of questions she was asked is unknown since interview transcripts are not available. The petitioner contends that because she has provided consistent evidence of her mother's neglect and abandonment and her father's death, USCIS should not rely on the Border Patrol's initial interview. The petitioner's assertions have merit. The Border Patrol's narrative lists her mother's name but not her father's name, and provides that "[s]ubject[] claims her uncle, [REDACTED] lives in [REDACTED] North Carolina and her parents live[] in Honduras. . . ." *Record of Deportable/Inadmissible Alien*, dated July 2, 2013. The record does not include a transcript of this interview or any other written statements by the interviewing officer or the petitioner to clarify the identities of the petitioner's "parents." This narrative, by itself, does not diminish the value of the remaining evidence in the record, which provides a reasonable basis for the court's finding of the petitioner's abandonment by her mother and her father's murder.

In sum, the preponderance of the evidence shows that the petitioner's request for SIJ classification is bona fide and that the agency's consent to the grant of SIJ status is warranted under subsection 101(a)(27)(J)(iii) of the Act. The director's decision to the contrary shall be withdrawn.

*Conclusion*

In this case, as in all visa petition 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, the petitioner has shown by a preponderance of the evidence that she is eligible for the benefit. Accordingly, the director's decision will be withdrawn and the petition will be approved.

**ORDER:** The August 20, 2014 decision of the Charlotte Field Office Director is withdrawn, and the petition is approved.