



U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

JUN 09 2015

FILE #:

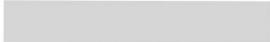


PETITION RECEIPT #:



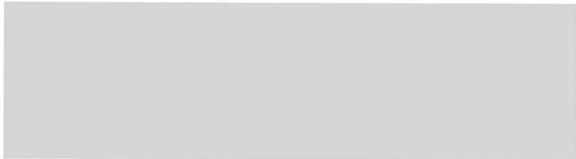
IN RE:

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director of the New York District (the “director”) denied the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded to the director for further action.

The petitioner is a 22-year-old citizen of India 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 is not eligible for SIJ classification because he was 21 years old at the time he filed his SIJ petition, and denied the petition accordingly.

We conduct appellate review on a *de novo* basis. On appeal, the petitioner has overcome the director’s ground for denial. However, because the petition is not approvable based on the present record, the matter will be remanded to the director for further action and issuance of a new decision.

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) District or 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)(hereinafter “*SIJ Memo #3*”)(quoting H.R. Rep. No. 105-405 at 130 (1997)).

Pertinent Facts

The petitioner was born in India on [REDACTED]. He entered the United States on or about August 31, 2010 from the Mexican border. The petitioner was apprehended by U.S. Border Patrol during his entry at or near [REDACTED] Arizona and placed in the custody of the Office of Refugee Resettlement (ORR). On July 23, 2013, the Family Court of the State of New York, [REDACTED] (hereinafter “juvenile court”) determined that reunification of the petitioner with his father is not viable and it is not in his best interest to return to India. *Order - Special Juvenile Status*, N.Y. Fam. Ct., [REDACTED] (July 23, 2013). The juvenile court subsequently appointed [REDACTED] temporary guardian of the petitioner and issued Mr. [REDACTED] temporary letters of guardianship, valid until November 4, 2013. *Temporary Order Appointing Guardian of the Person*, N.Y. Fam. Ct., [REDACTED] (Sept. 17, 2013); *Temporary Letters of Guardianship*, N.Y. Fam. Ct., [REDACTED] (Sept. 17, 2013).

The director determined that the petitioner is not eligible for SIJ classification because he was 21 years old at the time he filed his Form I-360, Petition for Special Immigrant, (SIJ petition). On appeal, the petitioner asserts that USCIS received the SIJ petition on October 10, 2013, [REDACTED] prior to his 21st birthday. The petitioner submits a copy of a United States Postal Service (USPS) express mail receipt and delivery confirmation.

Analysis

To be classified as an SIJ, an alien must be a child on the date the SIJ petition is filed. 8 C.F.R. § 204.11(c)(1) - (2). A child is defined under the Immigration and Nationality Act as an unmarried person under the age of 21. Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). The USPS express mail receipt provided on appeal reflects that on October 10, 2013 ([REDACTED] prior to the petitioner’s 21st birthday) the Vermont Service Center received the petitioner’s SIJ petition. The Vermont Service Center forwarded the SIJ petition to the Chicago Lockbox, which is the USCIS designated filing location for SIJ petitions. As the petitioner’s SIJ petition was received by USCIS prior to the petitioner’s 21st birthday, he was a child on the date the petition was filed. The petitioner has therefore overcome the director’s sole basis for denial. Accordingly, the director’s determination shall be withdrawn.

The petition is not approvable, however, because the juvenile court order remains deficient.¹ The plain language of the statute requires that an SIJ petitioner demonstrate that “reunification with 1 or both of the immigrant’s parents is not viable.” Section 101(a)(27)(J)(i) of the Act. Here, the juvenile court issued an order of special findings containing a determination that reunification with the petitioner’s father is not viable due to neglect. *Order - Special Juvenile Status*, N.Y. Fam. Ct., [REDACTED] (July 23, 2013). The court subsequently awarded Mr. [REDACTED] temporary guardianship of the petitioner and issued temporary letters of guardianship with an expiration date of November 4, 2013. *See Temporary Letters of Guardianship*, N.Y. Fam. Ct., [REDACTED] (Sept. 17, 2013). This temporary custody order does not establish that parental reunification is no longer a viable option because the petitioner has not shown that the court granted permanent custody to Mr. [REDACTED]. *See* Section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (providing that a court-appointed custodian who is acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility).

Even if the juvenile court had issued a permanent guardianship order, the court’s findings do not contain a reasonable factual basis for the nonviability-of-reunification and best-interest determinations. Court 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. *See SIJ Memo #3* at 4-5. Here, the court order states that reunification with the petitioner’s father is not viable due to neglect because he was required “to work in the fields (owned by his father) without providing sufficient safety measure as a result the minor sustained significant injury.” *Order - Special Juvenile Status*, N.Y. Fam. Ct., [REDACTED] [REDACTED] (July 23, 2013). The court order does not further explain the petitioner’s circumstances to establish the specific factual findings that the court made to determine that the petitioner was neglected under New York law. Furthermore, the court’s ruling that it is not in the petitioner’s best interest to be returned to India is a general statement with no factual findings upon which that determination was made. *See id.*

The record contains no evidence from the juvenile court proceedings such as, for example, the original application for guardianship, the transcript of any hearing held on the application, affidavits from individuals who know or have evaluated the petitioner, or any other evidence the court considered regarding the nonviability-of-reunification and best-interest determinations. *See SIJ Memo #3* at 5; *see also Special Immigrant Juvenile Petitions*, 76 Fed. Reg. 54978, 54981, (proposed Sept. 6, 2011)(to be codified at 8 C.F.R. § 204.11)(describing the types of evidence that USCIS may request and consider when making a consent determination). Because of these deficiencies, even if the petitioner had a qualifying custody order, consent to SIJ classification under section 101(a)(27)(J)(iii) of the Act would not be warranted based upon the current record.

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 director 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).

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). Although the petitioner has overcome the director's ground for denial, he remains ineligible for SIJ classification on other grounds. Accordingly, the director's decision will be withdrawn and the matter will be remanded to the director for further action in accordance with the preceding discussion. The director shall then issue a new decision, which shall be certified to the AAO if adverse to the petitioner.

ORDER: The January 9, 2014 decision of the New York District Director is withdrawn. The petition is remanded to that office for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.