



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

(b)(6)



Date: **MAR 26 2015**

Office: NEWARK, NEW JERSEY

FILE: 

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)

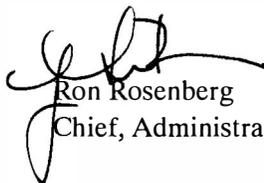
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Newark, New Jersey Field Office Director (the “director”) denied the special immigrant visa petition and affirmed her decision in a subsequent motion to reopen and reconsider. The matter is now before the AAO on appeal. The decision of the director will be withdrawn. The appeal will be sustained and the petition will be approved.

The petitioner is a 20-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 she denied the petition accordingly. On appeal, the petitioner submits a brief.

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 custody order nor the best interest 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] and he entered the United States without inspection from the Mexican border on or about February 17, 2010. He was apprehended by U.S. Border Patrol at the time of his 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). On April 12, 2010, the petitioner was released from ORR custody to his stepfather, [REDACTED]. On February 27, 2012, the Superior Court of New Jersey [REDACTED] (hereinafter “juvenile court”) granted joint custody of the petitioner to his mother and stepfather. *Order of Custody and Findings*, N.J. Super. Ct. [REDACTED], No. unrecorded (February 27, 2012).

The petitioner filed this Form I-360, Petition for Special Immigrant, on June 5, 2012. The director subsequently issued a Request for Evidence (RFE) of the facts supporting the juvenile court’s custody order. The petitioner responded to the RFE with additional evidence which the director found insufficient to establish eligibility. On July 26, 2013, the director denied the petition. The petitioner, through counsel, submitted a motion to reopen or reconsider. The director affirmed her prior decision and dismissed the motion. The petitioner timely filed the instant appeal.

Analysis

The director determined that the record did not contain a reasonable factual basis for the court’s finding that the petitioner’s father abandoned him because “death . . . under NJ Law Statute 9:6-1 does not equal abandonment.” The director further determined that since the brief supporting the custody complaint references SIJ status, the primary purpose in obtaining the custody order was for immigration purposes. *Director’s Decision on Motion to Reopen and Reconsider*, dated December 3, 2013. On appeal, the petitioner asserts that the director erred by going behind the juvenile court’s order to make her own determination that the petitioner had not been abandoned by his father under New Jersey law. He contends that he provided evidence of specific factual findings that support a basis for the court’s order. He explains that the “special SIJ language” in the court’s order was only included because it is required for consent purposes.

We review these proceedings *do novo*. Our review of the record reveals that the director erred by going behind the court’s order to make her own determination that the petitioner had not been abandoned by his father under New Jersey law, and determining that the primary purpose in

obtaining the custody order was for immigration purposes because the brief supporting the custody complaint referenced SIJ status.

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).¹ 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.² Accordingly, the agency's consent determination must be based on material evidence in the record, not a subjective belief that the juvenile court order was sought primarily to obtain an immigration benefit.

Here, the record shows that the petitioner's mother and stepfather petitioned for joint custody of the petitioner because he was abandoned after his father's death in Honduras and his grandmother who was raising him is now elderly and can no longer protect him from gang violence in the country. The underlying complaint for the custody order filed with the juvenile court contains the following facts:

Because [the petitioner's] father has passed away, his mother and stepfather provide a stable and loving home, an award of custody to his mother and stepfather is in [the petitioner's] best interests. . . .

Here, the best interests analysis weighs overwhelmingly in favor of vesting sole custody in [redacted] and [redacted]. Mother and stepfather have demonstrated a clear capacity to safeguard [the petitioner's] well-being. Mother cared for him when he was an infant, and continued to provide support throughout the years. Mother and stepfather have provided [the petitioner] with a home and nurturing support since [the petitioner's] arrival in the United States in February 2009. . . .

¹ 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).

² *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).

[The petitioner's] biological father, [REDACTED], is deceased. . . . [The petitioner] has in effect been abandoned by one parent when his father passed away and . . . therefore it is not viable for him to be reunited with 1 o[f] his parents due to this fact.

[I]t is not in [the petitioner's] best interest to be returned to Honduras. . . . He would also suffer emotionally from breaking the bond he has forged with his mother and his mother's new family, his half sisters and brother. . . . [The petitioner's] only available and responsible caretaker is [REDACTED], his mother and [REDACTED], his stepfather.

The conditions in Honduras for children generate additional concern for [the petitioner's] well-being. . . . [The petitioner] cannot go back to a violent and inadequate household without any protection from a responsible adult. In contrast, he has [REDACTED] and [REDACTED] here to give him the care, support, and protection he needs.

Brief in Support of [REDACTED] and [REDACTED] Petition for Custody and for Findings of Fact

In the affidavits submitted in support of the custody complaint, the petitioner, his mother and stepfather further discuss the underlying basis for the custody order. The petitioner's mother recounted that the petitioner's father passed away on March 17, 2002 and was raised by his grandmother in Honduras. She explained that her mother is now elderly, has diabetes and can no longer raise and protect the petitioner from gang violence. She stated that she wanted custody of the petitioner because she is his immediate family member and can best care for him. *Affidavit of [REDACTED]*, dated December 20, 2011. The petitioner's stepfather also stated that he seeks joint custody of the petitioner in order to best provide and care for him. *Affidavit of [REDACTED]* dated December 20, 2011. The petitioner stated that he was three and a half years old when his mother left him in the care of his maternal grandmother. He recounted that his grandmother is now elderly, has diabetes and is unemployed. He stated that he came to the United States because he had no one else to care for him in Honduras. He explained that he does not want to return to Honduras because of gang violence in the country and he wants to stay with his immediate family in the United States. *Petitioner's Affidavit*, dated December 20, 2011.

Other relevant evidence in support of the custody order includes the petitioner's birth certificate, his father's death certificate and the marriage certificate between the petitioner's mother and stepfather. While not relied upon in the juvenile court's decision, the record contains affidavits from the petitioner, his mother and his maternal grandmother, which discuss his contact and relationship with this father. The petitioner stated "when my father passed away on March 17, 2002 I felt very alone and as the years went by and I was a young male without a Dad I felt that I needed to escape to a different place where I would have the help of a Dad and Mom. . . . if I had my father around I would have felt safer and not worry about the gang violence and pressure of being forced into one." *Petitioner's Affidavit*, dated August 23, 2013. The affidavits from the petitioner's mother and his grandmother echo these sentiments. *See Affidavit of [REDACTED]* [REDACTED] dated August 23, 2013 and *Statement of [REDACTED]*, undated.

De novo review of the record shows that the petitioner's mother and stepfather petitioned for joint custody of the petitioner because he was abandoned after his father's death in Honduras and

his grandmother who was raising him is now elderly and can no longer protect him from gang violence in the country. That purpose was not negated by the juvenile court orders making the specific findings required to establish the applicant's eligibility for SIJ classification. The juvenile court's custody order satisfies the requirements of subsections 101(a)(27)(J)(i)-(ii) of the Act. The preponderance of the evidence shows that the petitioner's request for SIJ classification is bona fide and that USCIS consent to the grant of SIJ status is warranted under subsection 101(a)(27)(J)(iii) of the Act.

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 he is eligible for the benefit. Accordingly, the appeal will be sustained, the director's decisions will be withdrawn, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.