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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **MAY 07 2015**

[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:

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The New York District Director (the “director”) denied the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 denied the petitioner’s request for SIJ classification because he was 21 years old at the time he filed his petition.

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 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. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, 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). See section 235(d) of the TVPRA; see also Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs. (USCIS), 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*). The SIJ provisions of the TVPRA are applicable to this appeal. See section 235(h) of the TVPRA.

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[.]

Pertinent Facts

The petitioner was born in India on [REDACTED]. He entered the United States from Mexico on or about October 19, 2010. He was apprehended by U.S. Border Patrol on November 12, 2010 near [REDACTED] Texas. On September 24, 2014, the Family Court of the State of New York, [REDACTED] (juvenile court) appointed [REDACTED] guardian of the petitioner for [REDACTED] until he turned 21 years old, and issued him letters of guardianship. *Order Appointing Guardian of the Person*, N.Y. Fam. Ct., [REDACTED] (Sept. 24, 2013). The juvenile court contemporaneously determined that reunification of the petitioner with his parents is not viable and it is not in his best interest to return to India. *Order – Special Immigrant Juvenile Status*, N.Y. Fam. Ct., [REDACTED] (Sept. 24, 2013).

The petitioner filed this Form I-360, Petition for Special Immigrant, on November 4, 2013. The director denied the petitioner's request for SIJ classification because he was 21 years old at the time he filed his petition. On appeal, the petitioner asserts that USCIS received the Form I-360 SIJ petition prior to his 21st birthday, but the SIJ petition was erroneously rejected. The petitioner submits a copy of a Form I-797C (Notice of Action) and a copy of his initial Form I-360 SIJ petition.

The AAO reviews these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims and additional evidence submitted on appeal does not overcome the director's ground for denial. The appeal will remain dismissed for the following reasons.

Age Out Determination

To be classified as an SIJ, an alien must be a child on the date the Form I-360 SIJ petition is filed. 8 C.F.R. § 204.11(c)(1) - (2). A child is defined as an unmarried person under the age of 21. Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). The TVPRA provides age-out protection to SIJ petitioners so that 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); *TVPRA - SIJ Provisions Memo* at 2-3. The record reflects that the petitioner initially submitted his Form I-360 SIJ petition to the USCIS Chicago Lockbox on October 10, 2013, [REDACTED] prior to his 21st birthdate. However, the SIJ petition was filed on the prior version of the Form I-360 dated January 18, 2011. USCIS issued a new edition of the Form I-360 on March 5, 2013.

The regulations provide that "[e]very benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions." 8 C.F.R. 103.2(a)(1). Here, the

form instructions mandate that USCIS will only accept prior versions of the Form I-360 until July 4, 2013.¹ The USCIS Chicago Lockbox rejected the initial submission of the petitioner's Form I-360 SIJ petition because it was received over three months after this deadline. The petitioner's Form I-360 SIJ petition was not refiled with USCIS on the correct form until after the petitioner's 21st birthday on November 4, 2013. The regulations do not allow for the retention of a filing date on a rejected benefit request. See 8 C.F.R. 103.2(a)(7)(iii). The director therefore correctly determined that the petitioner is ineligible for SIJ classification because he was not a child on the date that the Form I-360 SIJ petition was filed, as required by 8 C.F.R. § 204.11(c)(1) - (2).

USCIS Consent

Even if the petitioner had filed the Form I-360 prior to his 21st birthday, he would still not be eligible for SIJ classification because the juvenile court order is deficient.² The petitioner bears the burden of proof to establish that his request for SIJ classification is bona fide and that he sought the juvenile court order primarily to obtain relief from parental abuse, neglect, or abandonment, rather than to gain lawful permanent residency. H.R. Rep. No. 105-405 at 130 (1997); see also 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* (May 27, 2004) at 2 (hereinafter *SIJ Memo #3*). 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. *SIJ Memo #3* 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). Here, the petitioner did not provide any evidence to support a reasonable factual basis for the court order.

On September 24, 2013, the juvenile court entered an order containing, in part, the following findings:

4. Reunification with [the petitioner's] parents is not viable due to abuse, neglect, abandonment or similar basis under New York law . . . because: The father has abandoned him when he was 10 years old and he has been neglected by his mother who put him out of her home.
5. It is not in the child's best interest to be return[e]d to his country of nationality or country of last habitual residence of the child or of his birth parents.

¹ See U.S. Citizenship and Immigration Services (USCIS) *Form Updates*, <http://www.uscis.gov/forms-updates> (accessed March 30, 2015). See also the definitions of *Form* and *Form Instructions* at 8 C.F.R. § 1.2.

² 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).

Order – Special Immigrant Juvenile Status (Sept. 24, 2013).

The juvenile court order includes the requisite nonviability-of-reunification determination and states that the petitioner's father abandoned him and his mother neglected him, but it does not offer any specific factual details upon which this determination was made. The best-interest determination states that it is not in the petitioner's best interest to return to India, but it does not explain the basis for such a finding. 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 or any other evidence the court considered regarding the nonviability-of-reunification and best-interest determinations. The record also lacks any statements from individuals who know or have evaluated the petitioner that are relevant to the court's findings. *See id.* (describing the types of evidence that USCIS may request and consider when making a consent determination). Because of these deficiencies, consent to SIJ classification under subsection 101(a)(27)(J)(iii) of the Act is not warranted in this case.

Conclusion

The petitioner has not shown that he was a child at the time he filed his Form I-360 SIJ petition and that his request for SIJ classification is bona fide and merits the agency's consent. Consequently, the petitioner does not meet the requirements of section 101(a)(27)(J) of the Act and the appeal will be dismissed.

In these 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, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.