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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:

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 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 subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner is a 19-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 juvenile court's temporary custody order does not make a permanent finding of nonviability of reunification with the petitioner's parents and the record did not provide a reasonable factual basis for the juvenile court's temporary custody order. He denied the petition accordingly and certified his decision to the AAO for review.

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 May 7, 2012. 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 July 23, 2012, the petitioner was released from ORR custody to his sister, [REDACTED]. On March 18, 2014, the General Court of Justice District Court Division, [REDACTED] (hereinafter “juvenile court”) granted an ex parte emergency custody order to the petitioner’s sister. *Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED] (March 18, 2014).

The petitioner filed this Form I-360, Petition for Special Immigrant, on March 19, 2014. The director subsequently issued a Notice of Intent to Deny (NOID) because the ex parte emergency custody order is temporary and the petitioner failed to provide a permanent custody order. The petitioner responded to the NOID with a brief. The director found the petitioner’s assertions to be insufficient to overcome the intended basis of denial. On August 6, 2014, the director denied the petition and certified his decision to the AAO for review.

The director informed the petitioner that his case was certified for review to the AAO and gave him the opportunity to respond within 30 days. The petitioner failed to provide a brief or any additional evidence in response to the notice of certification. The record, as currently constituted, is considered complete for purposes of our *de novo* review of the director’s adverse decision.

Analysis

Nonviability-of-Reunification Determination

The director correctly determined that the petitioner failed to demonstrate that he is or was the subject of a qualifying juvenile court dependency or custody order because the ex parte emergency custody order only made a temporary finding that reunification with the petitioner’s parents was not viable. *Notice of Certification*, dated August 6, 2014. An order is temporary in North Carolina “if either (1) it states a clear and specific reconvening time in the order and the time interval between the two hearings was reasonably brief; or (2) the order does not determine

all issues.” *Lamond v. Mahoney*, 583 S.E.2d 656, 659 (N.C. App. Ct. 2003)(citing *Brewer v. Brewer*, 533 S.E.2d 541, 546 (N.C. App. Ct. 2000)). Here, the juvenile court awarded the petitioner’s sister the “temporary care, custody, and control” of the petitioner subject to a hearing ten days later on March 28, 2014. *See Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED] (March 18, 2014). The juvenile court’s finding of nonviability of reunification with the petitioner’s parents was issued on a temporary basis, subject to a redetermination hearing ten days later. The petitioner did not submit a permanent custody order from the subsequent court appointed hearing. Temporary custody orders in North Carolina may leave certain issues outstanding “pending the resolution of a claim for permanent custody.” *Regan v. Smith*, 509 S.E.2d 452, 454 (N.C. App. Ct. 1998). The juvenile court’s temporary determination does not establish that “family reunification is no longer a viable option” because the court did not ultimately grant permanent custody to the petitioner’s sister. *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 acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility). The petitioner therefore has not satisfied the nonviability-of-reunification requirement of section 101(a)(27)(J)(i) of the Act.

USCIS Consent

The director determined that even if the petitioner had a qualifying juvenile court custody order, his request for SIJ classification would not be bona fide because his primary purpose in seeking the custody order was to secure immigration status rather than seek relief from abuse, neglect or abandonment. The director specifically found that “the petitioner did not seek the state court order for the purpose of gaining protection from his parents’ abandonment because the petitioner has no legal parents as set out in the INA that have abandoned him.” The director also found that the record did not contain any documentary evidence such as the death certificates for the petitioner’s parents to substantiate the statements in the court order. *Notice of Certification*, dated August 6, 2014.

The director erred when he went behind the court’s order to make his own determination that the petitioner had not been abandoned by his parents and this part of the decision will be withdrawn. 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

However, the director correctly determined that the record does not contain specific factual findings to support the court order. Court orders that contain or are supplemented by specific

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).

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 Here, the juvenile court order states that the petitioner's parents abandoned him when they died and he "has been found to have no one in Honduras to care for him due to his parents' deaths and their failure to provide a substitute home" for him. The order further provides that the petitioner "was unable to attend school since age eight (8), he did not always have enough food to eat, he had no one to care for him because his only caretaker, his elderly grandfather, became too sick to do so" *Order Granting Ex Parte Emergency Custody*, Dist. Ct. Div., [REDACTED] (March 18, 2014). Although the court found that the petitioner was abandoned because of the death of his parents, the record does not contain copies of their death certificates. The record contains no other evidence from the juvenile court proceedings such as, for example, the original motion for emergency custody, the transcript of any hearing held on the motion, affidavits of those with knowledge of the petitioner's situation, or any other evidence the court considered regarding its findings. Because of these deficiencies, consent to SIJ classification under section 101(a)(27)(J)(iii) of the Act is not warranted in this case.

Conclusion

The petitioner failed to establish that he was the subject of a qualifying juvenile court custody order. He has also not shown by a preponderance of the evidence that his request for SIJ classification is bona fide and merits the agency's consent. Consequently, the petitioner does not meet subsections 101(a)(27)(J)(i) and (iii) of the Act and the petition will remain denied.

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 director's decision will be affirmed and the petition will remain denied.

ORDER: The August 6, 2014 decision of the Charlotte Field Office Director is affirmed. The petition will remain denied.

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).