



U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

MAY 26 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.

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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The [REDACTED] Texas Acting Field Office 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 18-year-old citizen of Mexico 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 failed to establish that his request for SIJ classification is bona fide and merits the agency’s consent. 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[.]

Pertinent Facts

The record reflects that the petitioner was born in Mexico on [REDACTED]. He claims he entered the United States without inspection in July 2004. On [REDACTED], the District Court of the [REDACTED] Judicial District in [REDACTED] County, Texas (hereinafter “juvenile court”) declared the

petitioner dependent upon the juvenile court. *In the Interest of* [REDACTED] No. [REDACTED] (Dist. Ct. [REDACTED] (Order of Dependency and Findings)).

The petitioner filed this Form I-360, Petition for Special Immigrant, on June 17, 2014. On July 14, 2014, the director issued a Request for Evidence (RFE) of a reasonable factual basis for the dependency order. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish eligibility. The director concluded that the petitioner failed to establish that his request for SIJ classification is bona fide and merits the agency's consent, and he denied the petition accordingly. The petitioner submitted a timely appeal.

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

Analysis

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).

On [REDACTED] the juvenile court entered a dependency order containing the following pertinent findings:

6. Petitioner, [REDACTED] a minor the subject of this suit has been subjected to parental abuse, and/or abandonment, and/or neglect as those terms are defined under Chapter 261.001(4) of the Texas Family Code, and parental abuse and/or neglect and/or abandonment as those terms are used in U.S.C. § 1101(a)(27)(J)(i).
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 minor, Petitioner, [REDACTED] is dependent upon this juvenile court in accordance with the laws of the State of Texas while such juvenile is residing in the State of Texas and is under the jurisdiction of this Court.

9. That it is not in the Petitioner, [REDACTED] the minor's best interest to be returned to his or his parent's previous country of nationality or country of last habitual residence.

In the Interest of [REDACTED] No. [REDACTED] at 3.

The juvenile court order states that one or both of the petitioner's parents subjected him to "parental abuse, and/or abandonment, and/or neglect," but it does not specify which of these three circumstances the juvenile court determined existed in the petitioner's case. The best interest determination also contains no specific factual details upon which the finding was made.

In response to the RFE, the petitioner submitted: his father's death certificate; the underlying petition for declaratory judgment; and an affidavit from his mother that was filed with the juvenile court. The petitioner's mother states in her affidavit that on November 25, 2013 the petitioner's father died in a car accident when he was driving too fast and was not wearing his seat belt. *Affidavit of* [REDACTED] dated April 16, 2014.

The petition for declaratory judgment provides, in part:

The child's father died in a car accident due to his own negligence. He did not have life insurance or money in savings in order to insure that his son would be provided for in his untimely death. This child seeks a declaration from this Court of his status as an abused, neglected or abandoned child from whom reunification with one or more parents is not viable.

Original Petition for Declaratory Judgment at 4, filed [REDACTED].

The petition for declaratory judgment states that the petitioner's father died in a car accident because of his own negligence. Although the petition for declaratory judgment contains the word "negligence," that word is used in the context of the car accident. It does not indicate that the petitioner was himself subjected to parental neglect. The petitioner requested the juvenile court to make a determination on parental abuse, neglect or abandonment, but the court order does not specify which of these circumstances it deemed existed based on the facts he presented. Accordingly, the court order lacks specific factual findings to warrant the agency's consent.

On appeal, the petitioner asserts that he has shown by a preponderance of the evidence that his request for SIJ status is bona fide because he sought the juvenile court order primarily to obtain relief from his father's constructive abandonment. However, the record does not show that the juvenile court considered the petitioner's father's death to constitute abandonment. The court order simply mirrors the language of the SIJ statute without indicating which specific circumstance it deemed applied in the petitioner's case under Texas law. 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 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.

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.