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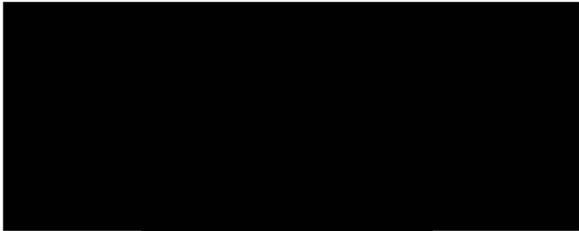
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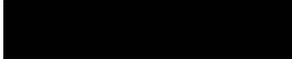
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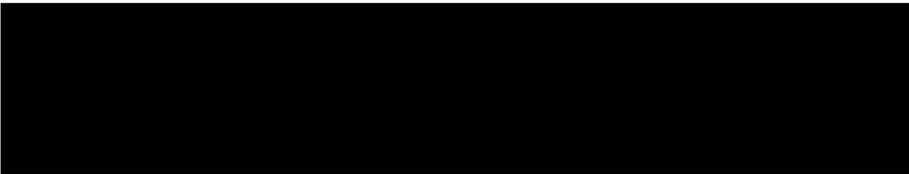
MAR 10 2008

IN RE: Petitioner:  
Beneficiary:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Detroit, Michigan, denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 19-year-old native and citizen of Guatemala. She seeks classification as a special immigrant juvenile (SIJ) pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4).

The Field Office Director found that the applicant failed to show that the U.S. Department of Homeland Security (“DHS”) consented to the jurisdiction of the State of Michigan 17<sup>th</sup> Judicial Circuit Court, Family Division, Kent County (juvenile court) to determine her custody status, as provided in section 101(a)(27)(J)(iii)(I) of the Act. *Decision of the Field Office Director*, dated June 27, 2007. Thus, the Field Office Director determined that the juvenile court’s dependency order may not serve as a basis for SIJ status and denied the petition accordingly.

On appeal, counsel for the applicant asserts that the applicant did not require the specific consent of the Secretary to the juvenile court’s jurisdiction, as she was no longer in the actual or constructive custody of DHS as of the date that the juvenile court issued its dependency order. *Brief from Counsel*, dated July 26, 2007.

The record contains a brief and correspondence from counsel; a petition filed before the juvenile court; a dependency order from the juvenile court, dated July 27, 2006; an order after preliminary hearing from the juvenile court, dated May 3, 2006; an order from the court appointing a guardian ad litem for the applicant, dated June 26, 2006; a motion for alternate service in which counsel asserts that she attempted to contact the applicant’s mother by telephone but received no response, dated June 15, 2006; a motion for alternate service in which counsel asserts that the location of the applicant’s father is unknown, dated June 15, 2006; a statement from a case worker regarding her knowledge of the applicant’s circumstances and her testimony before the juvenile court, dated June 6, 2007; a letter from U.S. Immigration and Customs Enforcement (“ICE”) denying the applicant’s request for DHS’s specific consent to the juvenile court’s jurisdiction over the applicant’s custody status, dated May 2, 2006, and; a document titled “Interim Placement Authorization” addressing the applicant’s placement with the Catholic Social Service Unaccompanied Minor Program by the Department of Health and Human Services (“HHS”), Office of Refugee Resettlement (“ORR”), Division of Unaccompanied Children’s Services, dated October 28, 2004. The entire record was considered in rendering a decision on the current appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant juveniles as described in section 101(a)(27)(J) of the Act, which pertains to 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 and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;

- (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 Attorney General [Secretary of Homeland Security] expressly consents to the dependency order serving as a precondition 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 actual or constructive custody of the Attorney General unless the Attorney General 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 . . . .

Pursuant to 8 C.F.R. § 204.11(c), an alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

- (1) Is under twenty-one years of age;
- (2) Is unmarried;
- (3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;
- (4) Has been deemed eligible by the juvenile court for long-term foster care;
- (5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and
- (6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents . . . .

The first issue in this proceeding is whether the applicant required the specific consent of the Attorney General (now Secretary of DHS) in order for the juvenile court to take jurisdiction over her custody status or placement, pursuant to section 101(a)(27)(J)(iii)(I) of the Act. Section 101(a)(27)(J)(iii)(I) of the Act states that an applicant only needs such specific consent when she is in the actual or constructive custody of DHS.

In the instant matter, the applicant was born on May 3, 1988. She was taken into DHS custody on or about October 9, 2004 due to her presence in the United States without a legal immigration status, when she was age 16. On October 28, 2004, when the applicant was still age 16, the HHS/ORR Division of Unaccompanied Children's Services placed the applicant under the physical custody of the Catholic Social Service Unaccompanied Minor Program for her daily care and protection. *Interim Placement Authorization*, dated October 28, 2004. ORR indicated that the applicant remained "in the legal custody of the Federal government." *Id.* at 1. ORR further indicated that the reason for the applicant's placement was that she was "[a]n unaccompanied minor who [met] the definition of an unaccompanied alien child, 6 U.S.C. [§] 279(g)(2), and [was] in federal custody by reason of . . . her immigration status." *Id.* at 2. Thus, at the time the applicant was released from the physical custody of DHS, she was still deemed to be in the constructive custody of DHS.

On March 29, 2006, the applicant submitted a request to ICE to provide specific consent to the juvenile court's jurisdiction over her custody and dependency. On May 2, 2006, ICE denied the request for specific consent, based on a finding that the applicant would be unlikely to establish that she was eligible for SIJ status. *ICE Denial of Specific Consent*, dated May 2, 2006. Specifically, ICE determined that the applicant failed to show that she is eligible for long term foster care, as she did not establish that she is an abandoned, abused, or neglected child. *Id.* at 4. At no subsequent time did ICE provide specific consent to the juvenile court's jurisdiction over the applicant's dependency.

The applicant filed a petition before the juvenile court on her eighteenth birthday, May 3, 2006. On July 27, 2006, the juvenile court issued an order declaring the applicant a ward of the court and finding her eligible for long term foster care based on abuse, neglect, or abandonment. *Dependency Order*, dated July 27, 2006.

The record shows that the applicant was not in the actual custody of DHS on the date that the juvenile court held proceedings and issued orders regarding her dependency status.

It is noted that the Act and regulations do not provide a clear definition of "constructive custody." Adjudicators must look to current USICE practice to determine whether specific consent is required for a particular case. *Matter of Perez Quintanilla*, AAO Adopted Decision, at 6-7 (June 7, 2007); *Memorandum #3 - Field Guidance on Special Immigrant Juvenile Status Petitions* ("Yates Memo"), William R. Yates, Associate Director for Operations, Citizenship and Immigration Services ("CIS"), HQADN 70/23, at 5 (May 27, 2004). ICE, not CIS, will adjudicate requests for specific consent to a juvenile court's jurisdiction when necessary. Thus, in the absence of a clear definition of constructive custody in the Act or regulations, ICE policy as of the date of the juvenile court's order determines whether an applicant bears the burden of obtaining the Secretary's specific consent to the juvenile court's jurisdiction pursuant to section 101(a)(27)(J)(iii)(I) of the Act. *Matter of Perez Quintanilla* at 6-7; *Yates Memo* at 5.

In the present matter, the record reflects that the applicant was released from the physical custody of DHS on or about October 28, 2004 pursuant to the Interim Placement Authorization from ORR. *Interim Placement Authorization*, dated October 28, 2004. As observed by counsel, the basis for the applicant's placement under the Interim Placement Authorization consisted in part on the fact that she was "[a]n unaccompanied minor who [met] the definition of an unaccompanied alien child, 6 U.S.C. [§] 279(g)(2)." *Id.* at 2. In order to meet the definition of an unaccompanied alien child in 6 U.S.C. § 279(g)(2), an individual must have "not attained

18 years of age.” 6 U.S.C. § 279(g)(2). Thus, upon the applicant’s eighteenth birthday, May 3, 2006, she no longer met the definition of an unaccompanied alien child in 6 U.S.C. § 279(g)(2), and the basis for the ORR placement was no longer valid. The record contains no evidence or indication that ORR, ICE, or any other federal authority took measures to assert physical or legal custody over the applicant after the Interim Placement Authorization expired on her eighteenth birthday.

The applicant submitted a redacted letter from the ICE National Juvenile Coordination Unit to support that the applicant did not require ICE’s specific consent to the juvenile court’s jurisdiction. *Letter from ICE National Juvenile Coordination Unit*, dated February 13, 2007. The letter states that ICE’s specific consent is not required where an applicant “has been released from the custody of the federal government and has not received an order of removal.” *Id.* at 1. In the present matter, as discussed above, the record does not reflect that the applicant remained in the physical or constructive (legal) custody of the federal government as of the date the Interim Placement Authorization expired, on her eighteenth birthday. The applicant has not received a final order of removal. Thus, the letter from the ICE National Juvenile Coordination Unit supports that the applicant did not require ICE’s specific consent to the juvenile court’s jurisdiction as of her eighteenth birthday, the date the juvenile court began proceedings regarding her dependency.

Based on the foregoing, the juvenile court properly exercised jurisdiction and its orders may potentially serve as a basis for SIJ status.

The second issue in the present matter is whether the juvenile court’s dependency order constituted an informed decision based on the fact that the applicant showed that she was subjected to abuse, neglect, and abandonment, such that the Secretary should give express consent to the order serving as a precondition to the grant of SIJ status.

As noted above, section 101(a)(27)(J)(iii) of the Act provides that the Secretary of Homeland Security must expressly consent to the applicant’s dependency order serving as a precondition to the grant of special immigrant juvenile status.

*Express consent* means that the Secretary, through the CIS Field Office Director, has "determine[d] that neither the dependency order nor the administrative or judicial determination of the alien's best interest was 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.]"

*Yates Memo* at 4 (quoting H.R. Rep. No. 105-405, at 130 (1997)).

CIS is not bound to accept the determination of a state juvenile court that an applicant is an abused, neglected or abandoned minor, or that it is not in her best interest to be returned to her country of nationality, without sufficient indication of the basis for the decision and a clear showing that relevant facts were made known to the court. While such an order is required to establish eligibility under section 101(a)(27)(J) of the Act, it does not relieve the applicant from the burden of satisfying CIS that the order was supported by relevant facts, and that the applicant revealed all relevant information to the juvenile court so that it made an informed decision. *See Yates Memo* at 4.

[E]xpress consent [to an order] should be given only if the adjudicator is aware of the facts that formed the basis for the juvenile court's rulings on dependency (or state custody), eligibility for long-term foster care based on abuse, neglect, or abandonment, and non-viability of family reunification, or the adjudicator determines that a reasonable basis in fact exists for these rulings. The adjudicator generally should not second-guess the court rulings or question whether the court's order was properly issued. Orders that include or are supplemented by specific findings of fact as to the above-listed rulings will usually be sufficient to establish eligibility for consent. Such findings need not be overly detailed, but must reflect that the juvenile court made an *informed* decision.

*Yates Memo* at 4 (emphasis added).

In the present matter, the record does not show that the juvenile court was made aware of all relevant facts that have a bearing on whether the applicant is an abused, neglected, or abandoned child. Specifically, the May 2, 2006 letter from ICE refusing specific consent to the juvenile court's jurisdiction describes representations the applicant made to ICE upon her apprehension regarding her contact with her mother. *ICE Denial of Specific Consent*, dated May 2, 2006. ICE stated that the applicant reported that her mother was to pay her smugglers once the applicant arrived in Wisconsin. *Id.* at 1 (citing *Form I-213, Record of Deportable Alien*, dated October 10, 2004). ICE stated that the applicant's biological mother resides in the United States and that the applicant has maintained contact with her since apprehension. *Id.* at 4. ICE indicated that the applicant stated that her mother left her in the care of her grandparents, but that "there are numerous indications that [the applicant] intended to reunify with her mother once she came to the United States." *Id.* ICE stated that the applicant indicated that she had recently spoken with her mother, and she provided U.S. authorities with her mother's phone number and State. *Id.* (citing *DUCS Admission Assessment*, dated October 15, 2004).

ICE stated that the applicant reported that she came to the United States because her mother was worried about her, and she wished to be reunited with her. *Id.* (citing *Southwest Key Screening and Intake Form*, dated October 11, 2004). ICE relayed that, during a psychological assessment, the applicant indicated that her mother frequently called her and sent her money from the United States. *Id.* at 4-5. ICE stated that the applicant provided that her mother invited her to come to the United States and she promised to take care of the applicant and the applicant's daughter. *Id.* at 5. ICE reported that that the applicant recalled that her mother sent her money to pay a smuggler, and that she paid approximately \$4,500. *Id.*

ICE stated that the applicant provided that she had not been physically abused before, during, or after her journey to the United States. *Id.*

The applicant has not submitted sufficient evidence to show that the juvenile court was made aware of the applicant's representations regarding her contact with her mother, such that the juvenile court had the opportunity to fully explore whether the applicant was in fact abandoned.

The petition filed before the juvenile court on the applicant's behalf stated that the applicant was abandoned by her mother, yet it does not indicate that the applicant has continued to have contact with her mother.

*Petition before the Juvenile Court*, dated May 3, 2006. The petition asserted that the applicant “has no known relatives who are fit to care for her . . .,” but it did not address the applicant’s claim that her mother resides in the United States and promised to care for her and her child. *Id.* at 1.

The record contains a motion for alternate service in which counsel asserts that she attempted to contact the applicant’s mother by telephone but received no response, dated June 15, 2006. However, this motion does not indicate the number of attempts made to contact the applicant’s mother, or report whether it was confirmed that the applicant possessed her mother’s current telephone number. In the absence of information regarding the applicant’s ongoing and recent communication with her mother, the juvenile court would not have been properly informed such that it could pursue further inquiry regarding the applicant’s mother’s whereabouts and willingness to care for the applicant.

The record contains a declaration from a case worker regarding her knowledge of the applicant’s circumstances and the case worker’s testimony before the juvenile court. *Case Worker Statement*, dated June 6, 2007. In this declaration, [REDACTED] makes statements regarding the applicant’s circumstances, numbered “5” through “12.” *Id.* at 1-2. With the exception of statement number 10, [REDACTED] begins statements five through 12 with the phrase “I testified,” thus [REDACTED] represents that she reported the included information to the juvenile court. *Id.* As [REDACTED] did not indicate that she “testified” regarding the content of statement 10 before the juvenile court, it cannot be concluded that she did in fact testify regarding its content. The AAO views [REDACTED]’s inclusion of the language “I testified” in all but one statement as an intentional effort to make clear what testimony was given, and to isolate statement number 10 as information of which she has knowledge, but did not report to the juvenile court.

This distinction is significant, as statement number 10 in [REDACTED]’s declaration reports that the applicant contacted her mother upon her arrival in the United States, but that the applicant’s mother refused to care for her or offer assistance. *Case Worker Statement* at 1. [REDACTED] indicated that the applicant’s mother had agreed to help the applicant come to the United States because she believed the applicant would lose her baby along the way. *Id.*

Had the contents of [REDACTED]’s 10<sup>th</sup> statement been reported to the juvenile court, the court could have conducted appropriate inquiry to determine whether the applicant’s mother was available to care for the applicant. Yet, the applicant has not shown by a preponderance of the evidence that information about her contact with her mother before and after her arrival to the United States was made known to the juvenile court.

Based on the foregoing, the applicant has not shown that she revealed all relevant information to the juvenile court. Specifically, the record does not show that the juvenile court was given a complete explanation and evidence regarding the applicant’s contact with her mother. As such, the record does not show that the juvenile court’s finding that the applicant has been abandoned constitutes an informed decision. *Yates Memo* at 4. Therefore, DHS will not provide express consent to the juvenile court’s order serving as a precondition to a grant of SIJ status. Section 101(a)(27)(J)(iii) of the Act.

## Conclusion

Based on the foregoing, the applicant has established that she did not require the specific consent of the Secretary in order for the juvenile court to properly take jurisdiction over her dependency status. Yet, the applicant has not shown that the juvenile court's order constitutes an informed decision, as the applicant has not shown by a preponderance of the evidence that the juvenile court was apprised of all material facts. Accordingly, DHS will not provide express consent to the juvenile court's order serving as a precondition to a grant of SIJ status, and the present petition may not be approved.

In visa petition proceedings, the burden of proof is on the applicant to establish eligibility for the benefit sought by a preponderance of the evidence. *Matter of Brantigan*, 11 I&N Dec. 151 (BIA 1965). The issue "is not one of discretion but of eligibility." *Matter of Polidoro*, 12 I&N Dec. 353 (BIA 1967). In this case, the applicant has not shown eligibility for the benefit sought. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.