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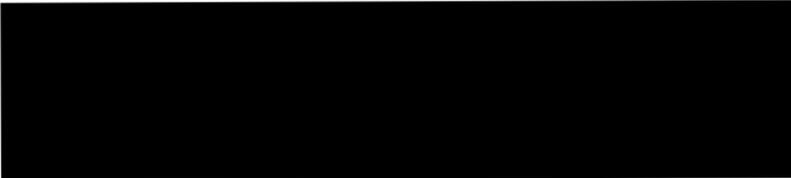
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IN RE: Petitioner:
Beneficiary:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting District Director, Miami, (“District Director”) denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The beneficiary is a 23-year-old native and citizen of Haiti who 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).

On March 7, 2006, the District Director denied the Form I-360 petition for SIJ status, finding that the applicant reached the age of majority in the State of Florida and was no longer dependent on a juvenile court or eligible for long-term foster care. *Decision of the Acting District Director*, dated March 7, 2006.

On appeal, counsel for the applicant asserts that the case should be reviewed on its merits. *Statement from Counsel on Form I-290B*, submitted April 19, 2006.

The record contains a statement from counsel on Form I-290B; a copy of a birth record for the applicant; copies of the applicant’s Form I-94, Departure Record, and B-1 visa; copies of medical documents for the applicant, and; a dependency order from the Circuit Court of the Eleventh Judicial Circuit In and For Miami-Dade County, Florida, Juvenile Division (“juvenile court”) and related documentation. The entire record was reviewed and considered in rendering this decision.

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;
- (3) Is *unmarried*;
- (4) 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;
- (5) Has been deemed eligible by the juvenile court for long-term foster care;
- (6) 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
- (7) 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 regulation at 8 C.F.R. § 204.11(a) provides the following:

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in [a] guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Florida Statute section 39.013(2) provides the following, in pertinent part:

Procedures and Jurisdiction. . . . If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review

hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under [section] 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

See also Fla. Child Welfare Administrative Rule 65C-31.010(1)(b)(2).

The record reflects that the applicant was born on April 8, 1985. His parents are deceased. He entered the United States on or about September 16, 2001. He has had health problems including blindness in one eye. He has had no relatives to care for him in the United States, and he has subsisted with the assistance of strangers. On November 15, 2002, the juvenile court declared him dependent on the court, and he was committed to the care of the State of Florida. On November 26, 2004, the applicant filed the present Form I-360 petition for SIJ status. On March 7, 2006, the District Director denied the petition. The applicant reached age 21 on April 8, 2006. He filed the present Form I-290B appeal on April 19, 2006.

The District Director noted that the applicant reached age 18 on April 8, 2003. The District Director determined that, pursuant to Florida Statute sections 39.01(12) and 39.013(2), as of the applicant's 18th birthday he was no longer eligible for long-term foster care in the State of Florida. Accordingly, the District Director found that the applicant did not satisfy the regulation at 8 C.F.R. § 204.11(c)(5), as he failed to show that he "[c]ontinues to be dependent upon the juvenile court and eligible for long-term foster care."

Upon review, the applicant has not shown that he meets the requirements of 8 C.F.R. § 204.11(c)(5). The juvenile court issued its dependency order on November 15, 2002, when the applicant was age 17. The juvenile court found that the applicant was dependent on the court, he was eligible for long-term foster care, that it was not in his best interests to be returned to Haiti, that it was in his best interests to remain in the United States, and that such conclusions were based on a finding of abuse, neglect, or abandonment. *Best Interest Order*, dated November 15, 2002. Thus, the applicant met the requirements of 8 C.F.R. § 204.11(c)(3) and (4) as of the date of the order.

Florida Statute section 39.013(2) allows a juvenile court to maintain jurisdiction over an applicant beyond his eighteenth birthday. However, the juvenile court did not indicate that it intended to retain jurisdiction over the applicant once he reached age 18. Thus, the applicant has not shown that he remained dependent on the juvenile court after he reached 18 years of age on April 8, 2003. Nor has the applicant shown that he remained committed to the care or placement of a State agency beyond his eighteenth birthday.

The regulation at 8 C.F.R. § 204.11(a) states that eligibility for long-term foster care "means that a determination has been made by the juvenile court that family reunification is no longer a viable option." Thus, the regulation at 8 C.F.R. § 204.11(c)(5) does not require an applicant to directly establish that he meets all State requirements to be placed into a foster care program. In light of 8 C.F.R. § 204.11(a), an applicant may meet the foster care component of 8 C.F.R. § 204.11(c)(5) by showing that the juvenile court on which he is dependent continues to find that it is not viable for him to be reunited with his family. 8 C.F.R. § 204.11(a).

In the present matter, the juvenile court's order did not address whether family reunification was a viable option for the applicant. Yet, the record reflects that both of the applicant's parents are deceased, thus it is evident that he may not be reunited with them.

However, in order to establish that he is eligible for SIJ status, the applicant must show that he is an individual "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." Section 101(a)(27)(J)(i) of the Act. In accord with congressional intent, as reflected in 8 C.F.R. § 204.11(c)(5), the applicant must show that the conditions described in section 101(a)(27)(J)(i) of the Act continue as of the time that the petition for SIJ status is adjudicated. As the applicant has not submitted evidence to show that he continued to be dependent on the juvenile court or under the care of a State beyond his eighteenth birthday, he has not shown that he met the requirements of 8 C.F.R. § 204.11(c)(5) after April 8, 2003.

Based on the foregoing, the applicant failed to show that he meets the requirements of 8 C.F.R. § 204.11(c)(5). For this reason, the petition may not be approved.

It is further observed that the applicant is now age 23. Pursuant to 8 C.F.R. § 204.11(c)(1), in order to qualify for SIJ status, an applicant must be under 21 years of age. 8 C.F.R. § 204.11(c)(1). Accordingly, the applicant does not meet the age limit imposed by 8 C.F.R. § 204.11(c)(1), and for this additional reason the petition may not be approved. It is further noted that the applicant filed the present appeal on April 19, 2006, after he had already reached age 21 and was no longer eligible for SIJ status.

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 proven eligibility for the benefit sought.

ORDER: The appeal is dismissed.