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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: FRESNO, CA

Date: **SEP 19 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Fresno, California, 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 an 18-year-old native and citizen of El Salvador. He 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 submit a juvenile court order that meets the requirements of section 101(a)(27)(J) of the Act, as the applicant was never found to be eligible for long-term foster care. *Decision of the Field Office Director*, dated May 30, 2008. The petition was denied accordingly.

On appeal, counsel for the applicant observes that the requirement to show that the applicant is “eligible for long-term foster care” is met where it is shown that a juvenile court has determined that family reunification is not viable. *Brief from Counsel*, dated September 2, 2008. Counsel contends that the applicant’s parents gave up their rights by consenting to the appointment of the applicant’s brother as guardian, thus in granting guardianship, the Superior Court of California, County of Fresno, Probate Department, Central Division (“juvenile court”) effectively found that family reunification is not viable. *Id.* at 3. Counsel further asserts that the fact that the applicant’s parents relinquished control over the applicant reflects that the applicant is dependent on the juvenile court. *Id.* Counsel contends that the primary reason that the applicant’s brother petitioned for guardianship over him was to protect the applicant from his parents’ negligence. *Id.*

The record includes, but is not limited to, a copy of the applicant’s passport; a birth record for the applicant; documentation in connection with the applicant’s proceedings in Immigration Court; a Probate Minute Order from the juvenile court granting guardianship of the applicant to his brother on March 13, 2008; a Confidential Investigator’s Report to the Court; a Petition for Appointment of Guardian of the Person filed by the applicant’s brother; documentation in connection with the applicant’s request for asylum in the United States; an annotated timeline for proceedings before the juvenile court; a document from the Office of Refugee Resettlement reflecting that the applicant was released from custody to his brother; a document reflecting that the applicant’s parents consented to the applicant’s brother being designated the applicant’s guardian, and; a Probate Court Guardianship Questionnaire completed by the applicant’s brother. The entire record was considered in rendering a decision on the current appeal.

Applicable Law

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 chapter;

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 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.

Facts and Procedure

The record reflects that the applicant was born in El Salvador on March 29, 1990. He is one of 10 children born to his parents. *Confidential Investigator's Report to the Court*, at 2, dated December 3, 2007. Due to war in El Salvador, he did not attend school until he was nine-years-old. *Id.* The applicant reported that he experienced problems with gangs in El Salvador, as they attempted to recruit him. *Id.* The applicant provided that he left school in seventh grade. *Id.* He indicated that his parents encouraged him to leave El Salvador for a better life in the United States. *Id.*

The applicant arrived in the United States in March 2006 and was detained by U.S. immigration officers. *Id.* at 1. He was placed into a detention center for juveniles until he was released to the custody of his brother. *Id.* The applicant's brother petitioned for guardianship of the applicant on September 24, 2007. *Petition for Appointment of Guardian of the Person*, dated September 24, 2007. The applicant's brother explained that the applicant's parents allowed the applicant to travel to the United States without proper documentation, and thus they are irresponsible and negligent. *Id.* at 2. The applicant's brother indicated that he needed guardianship over the applicant to make decisions regarding the applicant's medical care, education, and general welfare, as well as to complete the applicant's immigration to the United States. *Probate Court Guardianship Questionnaire*, dated December 6, 2007. On March 13, 2008, the juvenile court issued a probate minute order appointing the applicant's brother as his guardian. *Probate Minute Order*, dated March 13, 2008. In the order, the juvenile court checked a box indicating that:

Based on all of the pleadings in the file, based on the report of the Court Investigator, and based on all of the evidence and statements made in court, the Court finds that there is clear and convincing evidence that leaving the child(ren) in the parent's custody would be detrimental to the child(ren), and appointing a guardian of the person would be in the child(ren)'s best interests.

Probate Minute Order at 1.

The applicant filed the present petition for SIJ status on April 17, 2008. The field office director found that the applicant failed to submit a juvenile court order that meets the requirements of section 101(a)(27)(J) of the Act, as the applicant was never found to be eligible for long-term foster care. *Decision of the Field Office Director*, dated May 30, 2008.

Counsel's Assertions on Appeal

On appeal, counsel for the applicant observes that the requirement to show that the applicant is "eligible for long-term foster care" is met where it is shown that a juvenile court has determined that family reunification

is not viable. *Brief from Counsel*, dated September 2, 2008. Counsel contends that the applicant's parents gave up their rights by consenting to the appointment of the applicant's brother as guardian, thus in granting guardianship, the juvenile court effectively found that family reunification is not viable. *Id.* at 3. Counsel contends that the primary reason that the applicant's brother petitioned for guardianship over him was to protect the applicant from his parents' negligence. *Id.*

Analysis

Upon review, the applicant has not established that he meets the requirements for SIJ status. Specifically, although it appears the applicant has shown that a juvenile court deemed him eligible for long-term foster care, he has not established that he was declared dependent on the juvenile court as required by section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(3).

Counsel correctly observes that the requirement to show that the applicant is "eligible for long-term foster care" is met where it is shown that a juvenile court has determined that family reunification is not viable. 8 C.F.R. § 204.11(a). In the present matter, the underlying order from the juvenile court reflects that the court made a finding that it was not viable for the applicant to be reunited with his parents in El Salvador. Neither the juvenile court order nor any other document submitted by the applicant indicates, however, that he was declared dependent on the juvenile court. Section 360 of the California Welfare and Institutional Code states, in pertinent part:

After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows:

(a) Notwithstanding any other provision of law, if the court finds that the child is a person described by Section 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, *in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship*, if the court determines that a guardianship is in the best interest of the child, provided the parent and the child agree to the guardianship, unless the child's age or physical, emotional, or mental condition prevents the child's meaningful response (emphasis added).

Counsel suggests that the AAO can infer that he is dependent on the juvenile court from the fact that the applicant's parents relinquished control over him. Under California law, a court may appoint a legal guardian for a child in lieu of adjudicating the child a dependent child of the court if the parent has advised the court that he or she is not interested in family maintenance or reunification services. As counsel notes, the applicant's parents waived reunification when they consented to the guardianship, and there is no documentation on the record indicating that the juvenile court declared the applicant a dependent child of the court in addition to appointing his brother as his legal guardian. The AAO is therefore unable to conclude that the juvenile court declared the applicant dependent on the court as required under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(3).

Conclusion

Based on the foregoing, the applicant has not shown that he has been declared dependent on a juvenile court as required by section 101(a)(27)(J)(i) of the Act. Therefore, the 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. 493 (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.