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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
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Washington, D.C. 20536



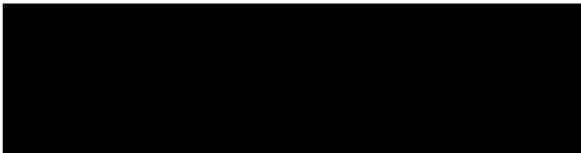
DEC 03 2003

FILE: [REDACTED] OFFICE: MIAMI, FLORIDA Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [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:



**PUBLIC COPY**

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 20-year-old native and citizen of El Salvador who seeks classification as a special immigrant juvenile pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4).

The district director determined that the beneficiary is ineligible for a special immigrant juvenile visa because he had not been abandoned or neglected by his parents. In his notice of intent to deny, the director stated that the record contained discrepancies as to whether the beneficiary knew of his parents' whereabouts. The district director, therefore, denied the petition.

On appeal, counsel states that even if the beneficiary had been in contact with his parents at the time of his dependency hearing, the juvenile court would have found him to be neglected and abandoned. Counsel asserts that the beneficiary meets the definition of abandoned and neglected as set forth in Florida state law. She said that the court made its determination on the basis that the beneficiary's parents had abandoned their child by failing to provide any support to him, and neglected him, by failing to provide for his welfare as he was forced into child labor at the age of ten. Counsel states that prior to filing a dependency petition, she conducted a diligent search for the beneficiary's parents and was unable to locate them. She asserts that the beneficiary had no contact with his parents prior to his dependency hearing on February 6, 2001.

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 expressly consents to the dependency order servicing 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.

The record reflects that the beneficiary entered the United States at or near Progreso, Texas on October 24, 1999 without inspection. On May 31, 2001, Catholic Charities Legal Services filed a petition on behalf of the beneficiary seeking classification as a special immigrant juvenile.

The issue in this proceeding is whether the director properly withheld his consent to the dependency order. This consent is an absolute statutory prerequisite to the granting of a special immigrant juvenile petition. Section 101(a)(27)(J)(iii) of the Act. Since the statute provides no standards indicating when the Director of Citizenship and Immigration Services (the Director) should, or should not, grant this consent, whether to grant this consent is necessarily a matter entrusted to the Director's discretion.

In cases of juveniles not in the custody of CIS, such as this, the Director's consent to the dependency order must be obtained as a precondition to the grant of special immigrant juvenile status. A dependency order is sufficient only if two elements are established: first, a juvenile court must have deemed the juvenile eligible for long-term foster care due to abuse, neglect, or abandonment; and second, it must have been determined in administrative or judicial proceedings that it would not be in the juvenile's best interest to be returned to the juvenile's or parent's previous country of nationality or country of last habitual residence. Section 101(a)(27)(J)(iii) of the Act.

The district director interviewed the beneficiary on January 18, 2002. In the course of the interview, the beneficiary admitted that he had contact with his parents in El Salvador. According to the director's notice of intent to deny, when asked whether he had any contact with his parents, the beneficiary stated that he spoke to them by telephone "about once every four months" and that he had last spoken to them "about five months ago." The beneficiary signed an affidavit stating, in part:

Do you maintain any contact with your parents?

They are living in El Salvador. I speak to them by the telephone about every four months. About five months ago.

On May 28, 2002, the director denied the petition based on a finding that the beneficiary had reestablished contact with his parents. The director noted that the judge specifically ruled that "reunification with his family is not possible" based on a finding that the beneficiary has not had any contact with his mother or father since 1999. The director also noted that counsel had represented to the court that the beneficiary's parents may have perished in the recent earthquake in El Salvador. Based on the conflicting testimony, the director questioned the validity of the judge's adjudicatory order.

On appeal, counsel states that the beneficiary was found dependent on the court on two separate grounds: neglect and abandonment. Counsel asserts that the director improperly substituted his judgment for that of the court. Counsel specifically claims that the whereabouts of the parents were not known at the time of the hearing. Counsel did not submit any evidence or affidavits in support of this claim.

Counsel's assertions are not persuasive. The evidence on the record indicates that the beneficiary speaks to his parents by telephone "about every four months," thereby implying that he has had contact with them on a continued basis and on more than one occasion. The beneficiary further stated in the interview that he last spoke to them "about five months ago," which would be around August 2001. The judge's adjudicatory order found the beneficiary dependent, in part, because the beneficiary had not had any contact with either parent since 1999. The judge's order is dated February 6, 2001, six months prior to the beneficiary's last claimed contact with his parents. Based on his sworn statement, it appears that the beneficiary had contact with his parents at the time of the hearing.

Also, counsel, on behalf of the beneficiary, represented to the court "[t]hat since the recent earthquake in El Salvador it is

unknown if the father [or the mother] was one of the thousands that perished." Counsel specifically implied that the beneficiary's parents might have perished in an earthquake. Counsel should have known otherwise if the beneficiary had been talking to his parents every four months.

Finally, the district director made a valid observation that the beneficiary's testimony conflicts with the judge's dependency order. In response, counsel did not submit any evidence, such as phone records or a statement from the beneficiary, in support of the appeal. Counsel did not submit any evidence that would clarify whether the beneficiary has had contact with his parents and whether that contact occurred during or prior to the court dependency proceedings. And although the director observed that the court continued to exercise jurisdiction and that the sudden reappearance of the beneficiary's parents constituted a dramatic change in circumstances, counsel is silent as to whether the court has been informed of these new developments.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, the petitioner has not submitted any competent objective evidence that would establish whether the beneficiary has had contact with his parents and whether that contact occurred during or prior to the court dependency proceedings.

To request the Director's consent, the court, state agency, or other party acting on behalf of the juvenile must provide CIS with documentation which establishes abuse, neglect, or abandonment as the underlying cause for the court's dependency order. The regulations specifically require the petitioner to demonstrate, in part, that the beneficiary "[h]as 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.*" 8 C.F.R. § 204.11(c)(6) (emphasis added).

The petitioner has failed to establish that the beneficiary qualifies as a special immigrant juvenile pursuant to sections 203(b)(4) and 101(a)(27)(J) of the Act. In the present case, the director noted inconsistencies regarding the basis for the

court's order, specifically that "reunification with his family is not possible" because, in part, the beneficiary has not had any contact with his mother or father since 1999. As previously discussed, counsel has not provided any evidence to clarify whether the beneficiary has had contact with his parents or whether this would affect the court's findings. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden. Therefore, the appeal will be dismissed. As determined by the district director, the Director does not consent to the dependency order.

**ORDER:** The appeal is dismissed.