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

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FILE: [Redacted] Office: MIAMI

Date: JUN 10 2005

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:



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, Director
Administrative Appeals Office

DISCUSSION: The District Director, Miami 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 nineteen-year-old native and citizen of Haiti 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 issued a decision on August 17, 2004, denying the visa petition citing the fact that the beneficiary had reached eighteen years of age on December 6, 2003, and was no longer, by operation of Florida law, considered to be dependent upon the juvenile court. The district director concluded that the beneficiary was therefore no longer eligible for long-term foster care and was thus ineligible for the benefit sought. *See Decision of the District Director, dated August 17, 2004.*

On appeal, the beneficiary's counsel asserts that the district director's denial of the petition resulted from a new interpretation of the statute and regulation governing Special Immigrant Juvenile (SIJ) petitions and that such interpretation was instituted without prior notice.

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 record reflects that the beneficiary entered the United States on October 29, 2002, aboard a boat that reached landfall off the coast of Florida. The beneficiary was placed into removal proceedings in Miami, Florida. The beneficiary was granted asylum by an immigration judge on January 28, 2003. The then Immigration and Naturalization Service (INS), filed an appeal of that decision to the Board of Immigration Appeals that remains pending. The beneficiary, with the assistance of counsel, also filed a Petition for Special Immigrant Juvenile status by filing Form I-360. In support of the petition, counsel for the beneficiary submitted a copy of a Florida state court order from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County Florida. That order declared the beneficiary to be dependent upon the court based on a finding that he had been abandoned, neglected, and/or abused the minor. The order further found that beneficiary was eligible for long-term foster care, and determined that it was not in his best interests to be returned to Haiti. *See Special Interest Order*, dated November 26, 2003

The record reflects that the petition was subsequently denied on August 17, 2004, on the basis that the applicant ceased being dependent upon the juvenile court on April 25, 2002, when he reached the age of eighteen. The Florida statutes contained at Title V, Chapter 39, referenced by the district director provide as follow:

39.01(12) "Child" or "youth" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

39.013(2) The circuit court shall have exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency. . .

When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age.

The district director found that because the beneficiary had reached the age of majority under Florida law, he was no longer under the jurisdiction of the family court system by virtue of having aged out of its jurisdiction. Consequently, he was no longer eligible for special immigrant status. *See Decision of the District Director*, dated August 17, 2004.

On appeal, counsel has not submitted a brief but asserts in the brief statement accompanying the Notice of Appeal (Form I-290B), that Citizenship and Immigration Services (CIS), has adjudicated Special Immigrant Juvenile petitions consistent with the requirements of the law for several years, but now adjudicated the beneficiary's petition based on a new interpretation of the law. Counsel does not elaborate on this assertion, and although she indicated that a brief and/or additional evidence would be submitted within thirty days, CIS has not received any submission from counsel.

8 C.F.R. § 103.3(a)(v) states in pertinent part:

(v) Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel has not articulated any specific errors of law or fact made by the district director, and simply asserts that the denial was based upon a new interpretation of the law. This is an insufficient basis for an appeal of the director's decision.

ORDER: The appeal is summarily dismissed and the district director's decision is affirmed.