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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: MIAMI

Date:

NOV 20 2006

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 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 sustained.

The applicant is a native and citizen of Canada 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).

The district director found that the applicant failed to show that she continues to be dependent upon a juvenile court and eligible for long-term foster care in the State of Florida, as the Circuit Court of the Twentieth Judicial Circuit In and For Collier County, Florida, Juvenile Division (“juvenile court”) ceased to have jurisdiction over the applicant once she reached age eighteen. 8 C.F.R. § 204.11(c)(6). The petition was denied accordingly.

On appeal, counsel for the applicant contends that the applicant meets the requirements of 8 C.F.R. § 204.11(c)(6), as the juvenile court retained jurisdiction over the applicant beyond her eighteenth birthday in order to allow the present petition to proceed. *Statement from Counsel on Form I-290B*, dated July 18, 2006. Thus, counsel asserts that the applicant is eligible for SIJ status. *Id.*

The record contains a statement from counsel on Form I-290B; a copy of the applicant’s birth certificate; a statement from the applicant’s father; orders from the juvenile court, dated April 4, 2005, April 20, 2006, and June 29, 2006, and; a copy of a petition filed with the juvenile court on behalf of the applicant. 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;
- (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

Florida Statute section 39.01(12) states, in pertinent part:

“Child” or “youth” means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

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.

Florida Rule of Juvenile Procedure section 8.415(f)(9) provides the following:

Judicial Review of Dependency Cases, Court Action. 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 solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction shall terminate on the final decision of the federal authorities, or on the immigrant child's 22nd birthday, whichever occurs first.

The issue in the present matter is whether the juvenile court continues to hold jurisdiction over the applicant, such that the applicant remains dependent upon the juvenile court and eligible for long-term foster care as required by the regulation at 8 C.F.R. § 204.11(c)(6).

The applicant reached her eighteenth birthday on June 17, 2005. Pursuant to Florida Statute section 39.01(12), the applicant ceased to meet the definition of a "child" on that date. However, a Florida juvenile court may extend its jurisdiction over an applicant for the purpose of allowing a petition for SIJ status to proceed before Citizenship and Immigration Services (CIS), under the authority of Florida Statute section 39.013(2) and Florida Rule of Juvenile Procedure section 8.415(f)(9).

In the present matter, the juvenile court issued three orders, each of which confirm that it was exercising its authority to maintain jurisdiction over the applicant while the instant petition for SIJ status is pending before CIS. The most recent order, dated July 18, 2006, references the present appeal and provides that jurisdiction shall continue during its pendency. In light of these orders, the juvenile court continues to hold jurisdiction over the applicant, such that she remains dependent upon the juvenile court and eligible for long-term foster care as required by the regulation at 8 C.F.R. § 204.11(c)(6).

It is noted that the applicant is under age 21, thus she continues to meet the age requirement provided by the regulation at 8 C.F.R. § 204.11(c)(1). The record reflects that the applicant is otherwise eligible for SIJ status.

Based on the foregoing, the applicant has established that she meets the requirements for SIJ status as provided in sections 203(b)(4) and 101(a)(27)(J) of the Act and regulation at 8 C.F.R. § 204.11(c).

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 shown eligibility for the benefit sought. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.