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U.S. Department of Homeland Security  
20 Mass. Ave, N.W. Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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FILE:

[REDACTED]

Office: CHICAGO

Date: JUN 02 2008

IN RE: Petitioner:

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:

[REDACTED]

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 Filed Office Director, Chicago, Illinois, denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> The appeal will be dismissed.

The applicant is a 15-year-old native and citizen of Guatemala. She 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 show that she meets the requirements of 8 C.F.R. § 204.11(c)(5), as she has been adopted by her older sister. *Decision of the Field Office Director*, dated June 14, 2007. The petition was denied accordingly.

On appeal, counsel for the applicant contends that the applicant continues to be eligible for SIJ status, despite the fact that she has been adopted. *Correspondence from Counsel*, dated April 2, 2007. Counsel contends that the applicant was dependent on the Circuit Court of Cook County, Illinois (“juvenile court”) due to the fact that the court took jurisdiction over the applicant for the purpose of adoption proceedings. *Id.* at 3. Counsel asserts that the applicant was eligible for long-term foster care under Illinois law, as the applicant’s parents are deceased and therefore reunification is not possible. *Id.* Counsel contends that the juvenile court determined that it was in the best interests of the applicant to remain with her older sister, who resides in Illinois, thus it is implied that the juvenile found that it was not in the applicant’s best interest to return to Guatemala. *Id.* at 3-4.

The record contains statements from counsel; a copy of an interim order and order of adoption from the juvenile court; a copy of a birth record for the applicant; a copy of the applicant’s passport; documentation in connection with the applicant’s prior application for asylum in the United States, and; documentation in connection with the applicant’s apprehension and proceedings in Immigration Court. 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

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<sup>1</sup> The AAO notes that counsel was incorrectly advised to file an appeal with the Board of Immigration Appeals on Form EOIR-29. As the AAO has jurisdiction over petitions for special immigrant juvenile status the appeal was properly forwarded to the AAO for adjudication.

- (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 [Secretary of Homeland Security] 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 Guatemala on November 20, 1992. Both of the applicant's parents died, and she traveled to the United States to reside with her older sister. She entered the United States without inspection. She was detained by U.S. immigration officers, and released to the custody of her sister. The applicant's sister petitioned to adopt her, and the juvenile court issued an adoption decree on January 19, 2006. The applicant filed the present petition for SIJ status on or about March 19, 2007.

### **Assertions on Appeal**

On appeal, counsel contends that the applicant continues to be eligible for SIJ status, despite the fact that she has been adopted. *Correspondence from Counsel*, dated April 2, 2007. Counsel contends that the applicant was dependent on the juvenile court due to the fact that the court took jurisdiction over the applicant for the purpose of adoption proceedings. *Id.* at 3 (citing 705 Illinois Compiled Statutes § 405/2-4(1)(a)).

Counsel asserts that the applicant was eligible for long-term foster care under Illinois law, as the applicant's parents are deceased and therefore reunification is not possible. *Id.* Counsel contends that the fact that the applicant's parents are deceased shows that reunification is not viable, thus the applicant remains eligible for long-term foster care under 8 C.F.R. § 204.11(a). *Id.*

Counsel contends that the juvenile court determined that it was in the best interests of the applicant to remain with her older sister, who resides in Illinois, thus it is implied that the juvenile found that it was not in the applicant's best interests to return to Guatemala. *Id.* at 3-4.

### **Analysis**

Upon review, the applicant has not established that she meets the requirements for SIJ status. *See* section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c).

As a preliminary matter, it is noted that the field office director stated that, as of the date of the applicant's adoption, she no longer met the requirements of 8 C.F.R. § 204.11(c)(5). *Decision of the Field Office Director* at 2. The regulation at 8 C.F.R. § 204.11(c)(5) requires an applicant to show that she "[c]ontinues 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." However, the regulation at 8 C.F.R. § 204.11(a) states that, "[f]or the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted . . . 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." Thus, the fact that the applicant was adopted did not affect whether she continued to be eligible for long-term foster care, as required by 8 C.F.R. § 204.11(c)(5).

Yet, the applicant has not shown that she met the requirements for SIJ status prior to her adoption. The record contains two orders from the juvenile court. On December 5, 2005, the juvenile court issued an interim order in which it appointed a guardian *ad litem* and awarded temporary custody of the applicant to her older sister. *Interim Order*, dated December 5, 2005. On January 19, 2006, the juvenile court issued a judgment order for adoption, awarding adoption of the applicant to her older sister. *Judgment Order for Adoption*, dated January 19, 2006. In the order for adoption, the juvenile court noted that both of the applicant's parents are deceased. *Id.* at 2. However, nowhere in either order did the juvenile court note that the applicant was abused, neglected, or abandoned, as required by section 101(a)(27)(J)(i) of the Act. Nor is there any evidence in the record to show that the applicant has been abused, neglected, or abandoned.

The record supports that the applicant was orphaned due to the death of her parents in Guatemala prior to her arrival in the United States. Yet, the applicant has not shown that the death of her parents constituted abandonment, or that the juvenile court considered or made such a finding.<sup>2</sup>

### Conclusion

Based on the foregoing, the applicant has established that she was orphaned by the death of her parents, but she has not shown that the juvenile court determined that she was abused, neglected, or abandoned, as required by section 101(a)(27)(J)(i) of the Act. Accordingly, the applicant has not established that she is 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. 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.

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<sup>2</sup> Section 101(b)(1)(F)(i) of the Act lists factors that may render a child an orphan. Section 101(b)(1)(F)(i) of the Act lists "the death or disappearance of [one's parents]" and "abandonment or desertion by [one's parents]" as separate and distinct events that may render a child an orphan. Thus, section 101(b)(1)(F)(i) of the Act lends weight to a finding that the death of the applicant's parents, absent evidence of abuse, neglect, or abandonment, does not render her eligible for SIJ status. *See* section 101(a)(27)(J)(i) of the Act.