U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Seattle, Washington Date: FEB 23 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the 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).

IN BEHALF OF PETITIONER:

[redacted]

identification data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The petition for special immigrant juvenile classification was denied by the District Director, Seattle, Washington, and the appeal was dismissed by the Associate Commissioner for Examinations. It has been determined that additional evidence submitted by the petitioner on appeal had not been forwarded in the record of proceeding and, consequently, was not considered by the Associate Commissioner. Accordingly, the matter will be reopened on the motion of the Associate Commissioner. The previous decisions of the director and the Associate Commissioner will be withdrawn, and the petition will be approved.

The petitioner is an unmarried 18-year-old native and citizen of Mexico who seeks special immigrant juvenile status under section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4). The district director found insufficient information to establish that the petitioner qualifies as a special immigrant juvenile and further determined that the petitioner had not complied with treaty law. In an order dated November 20, 2000, the Associate Commissioner concurred.

On appeal, counsel contends that the petitioner is in fact a neglected child who has been deprived of the most basic necessities of life due to his mother's failure to provide minimally adequate food, shelter, clothing, medical care and education. He further asserts that the juvenile court made the appropriate findings of neglect, that it would not be in the child's interest to return him to Mexico and that the petitioner is eligible for, and has been placed in, long-term foster care where he is flourishing.

The record previously considered by the Associate Commissioner did not contain the entirety of the evidence submitted in support of the petition. The record now contains copies of a Supplemental Motion and Order ("Supplemental Motion") as well as Permanency Planning Findings and Order rendered by the Superior Court of the State of Washington for King County, Juvenile Division on April 12, 2000. A Dependency Review Hearing Order issued by the court on November 5, 1999 is also now included in the record.

Section 101(a)(27)(J) of the Act provides benefits to an immigrant who is present in the United States and:

> (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 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.

In pertinent part, 8 C.F.R. 204.11(c) states that an alien is eligible for special immigrant juvenile classification 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.

It should be noted that the regulations have not been revised to implement the changes to the statute that were made by section 113 of Public Law 105-119, which took effect on the date of enactment, November 26, 1997. Accordingly, a candidate that satisfies the current regulation will not necessarily satisfy the requirements of the statute, which now requires that the petitioner obtain the Attorney General's consent to the dependency order and demonstrate that the juvenile court's dependency order is based on abuse, neglect, or abandonment.

Upon review, counsel's assertions are persuasive. The petitioner has satisfactorily established eligibility as a special immigrant juvenile pursuant to section 101(a)(27)(J) of the Act and the applicable regulations.

First, the record reflects that the petitioner is under 21 years of age as well as unmarried. These facts have never been disputed and comply with the requirements stated in 8 C.F.R. 204.11(c)(1) and (2).

Second, the record contains an Agreed Order of Dependency, dated April 30, 1999, which was agreed to by Lutheran Social Services, as the supervising agency, the mother of the child, and the petitioner. The mother of the petitioner, through counsel, voluntarily waived the opportunity to introduce evidence, be heard in her own behalf, examine witnesses, or receive the decision of an unbiased fact finder. The Agreed Order states that the petitioner has been declared dependent upon the Superior Court of the State of Washington for King County, Juvenile Division in accordance with Revised Code of Washington 13.34.030(4)(b), due to a finding of neglect.[1] Likewise, the Supplemental Motion reaches the same conclusion, citing Washington State law governing such declarations of dependency.

The record does not suggest that the petitioner was outside of the United States or beyond the jurisdiction of the court at the time of its rulings. The Dependency Review and Hearing Order, which was fundamental to the declarations of dependency and issued by the court on November 5, 1999, is now contained in the record. Consequently, the requirements of 8 C.F.R. 204.11(c)(3) are satisfied.

Third, according to Findings of Fact, paragraph seven, of the Supplemental Motion:

> The child has not been emancipated, but continues to be dependent on the juvenile court in accordance with state law. He continues to be eligible for long-term foster care, the prior court order and declaration not having been vacated, terminated, or otherwise ended.

The referenced prior court order, the Agreed Order of Dependency, also finds the petitioner eligible for long-term foster care. Consequently, the petitioner has similarly complied with the regulatory requirements mandated at 8 C.F.R. 204.11(c)(4) and (5).

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[1] Section 13.34.030(4)(b) of the Revised Code of Washington (1999), as relied upon by the court in the Agreed Order, states that a dependent child is one who "is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child." Section 26.44.020(12) of the Washington Revised Code declares that "'abuse or neglect' means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is [sic] harmed, excluding conduct permitted under RCW 9A.16.100."

Fourth, paragraph six of the Findings of Fact for the Agreed Order of Dependency states:

> After the father's death, in 1993, the family had no resources. There were significant periods in which [the petitioner] did not have proper nutrition and was often hungry. Because of the mother's poverty, basic necessities such as medical and dental care, medicine and appropriate living conditions were severely lacking. The mother, [redacted], was wholly unable to take care of the most basic needs of her child. [The petitioner] was consequently subjected to negligent treatment under circumstances which indicate the child's health, safety and welfare were harmed.

The court held that "[a] manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home, and . . . [p]lacement outside the child's home is in the best interest of the child . . . ." Similarly, paragraph two of the Findings of Fact of the Supplemental Motion states:

> It is not in the child's best interest to be returned to Mexico because of the particular circumstances of the death of his father, the destitution of his mother, and her inability to provide the basic necessities of life to the child. The evidence establishes that the child was deprived of the basic necessities of life while residing in Mexico, and that there are no resources available in Mexico to provide these necessities. However, the child has been flourishing in foster care in the United States.

These statements establish the final regulatory requirement pursuant to 8 C.F.R. 204.11(c)(6). Given the specificity of the court's findings, the fact that the petitioner has not provided further independent evidence in support of this requirement or even a summary of such evidence received by the court is not fatal to his claim. The juvenile court has clearly and reasonably determined that it would not be in the petitioner's best interest to be returned to Mexico, his country of nationality.

Finally, beyond the regulatory requirements, the petitioner must further establish that the juvenile court's dependency order is based on abuse, neglect, or abandonment, as required by the statutory changes made by section 113 of Public Law 105-119. This requirement is satisfied. As previously noted, the Agreed Order specifically entered a finding of neglect and declared the petitioner a dependent of the juvenile division of the Superior Court of King County, Washington.

The "Special Immigrant Juveniles Memorandum #2: Clarification of Interim Field Guidance," issued by Thomas E. Cook, Acting Assistant Commissioner for Adjudications on July 9, 1999 explains that, as a precondition to granting special immigrant juvenile status, the petitioner must satisfy an additional statutory requirement by obtaining the Attorney General's consent to the dependency order. The memorandum provides that, "[a]s an interim measure, district directors, in consultation with their district counsel, should continue to act as the consulting official in these cases." The decision of the district director is silent regarding the Attorney General's consent to the dependency order

in this matter. An implication thereby can be drawn that the district director denied the Attorney General's consent to the dependency order with his denial of the petition.

Having appellate jurisdiction over petitions for special immigrant juveniles pursuant to 8 C.F.R. 103.1(f)(3)(iii)(II), it follows that the Associate Commissioner for Examinations has similar authority as a consulting official in such matters on appeal. Therefore, the findings of fact made by the court in this matter are deemed to be sufficient information for granting the Attorney General's consent to the Dependency Order in this matter.

Regarding the district director's reliance on treaty law, the decision's reference to Chapter 37 of the Vienna Convention on Consular Affairs is perplexing. In his decision, the director stated that the denial of the visa petition was based in part on the petitioner's failure to comply with the consular notification provisions of the Vienna Convention on Consular Affairs. Neither the Act, the pertinent regulations of the Immigration and Naturalization Service, nor field guidance provides for a district director to adjudicate a special immigrant juvenile petition according to treaty law. However, it is not necessary to decide in this case whether the treaty is applicable to special immigrant juvenile petitions, since the court specifically notified the Mexican government of the juvenile court proceedings, and written notice to the Mexican consulate in Seattle was provided. Such actions would be found to satisfy the treaty obligations if they were applicable.

In conclusion, the petitioner has established that he qualifies as a special immigrant juvenile pursuant to section 101(a)(27)(J) of the Act. The Attorney General's consent to the dependency order is granted. Accordingly, the decisions of the director and the Associate Commissioner will be withdrawn and the petition will be approved.

ORDER: The decision of the director dated March 6, 2000 and the decision of the Associate Commissioner dated November 20, 2000 are withdrawn. The petition is approved.