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

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[Redacted]

File: [Redacted]

Office: DALLAS, TEXAS

Date: APR 21 2003

IN RE: Petitioner [Redacted]
Beneficiary [Redacted]

Petition: Petition for Special Immigrant Juvenile Pursuant to Section 202(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4)

IN BEHALF OF PETITIONER:

[Redacted]

**Identifying 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 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 the Bureau of Citizenship and Immigration Services (Bureau) 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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case remanded to her for entry of a new decision.

According to the evidence on the record, the beneficiary is a 20-year-old native of Guatemala 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 Petition for Special Immigrant Status was filed in 1999. The district director denied the petition on July 10, 2002. Counsel for the petitioner asked the district director to reconsider her decision. The district director reconsidered and affirmed her original decision on September 9, 2002. On September 16, 2002, the petitioner filed a timely appeal.

The district director denied the petition, finding that there is no evidence that the beneficiary has ever been declared dependent on a juvenile court located in the United States. The district director further found that the beneficiary's father had not abandoned the beneficiary.

On appeal, counsel for the petitioner asserts that the court expressly found that the beneficiary's father has had no contact with his children in over fifteen years and has abandoned them. Counsel also quotes an unpublished AAO decision:

There is no requirement that the State court decree contain the specific statement that the beneficiary is dependent on the [juvenile] court. The acceptance of jurisdiction over custody of a child by a juvenile court, when the parents have effectively, relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care or, as here, in a guardianship situation.

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.

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; or
- (7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

According to the record, the beneficiary's mother died in 1984, the beneficiary's father had no contact with the beneficiary since her birth in 1982, and the beneficiary has lived with various relatives since her entry into the United States in 1989, including her maternal grandparents. The beneficiary's maternal grandfather is

the petitioner in this proceeding. An Order in Suit Affecting the Parent-Child Relationship issued on June 15, 1999, by the 305th Judicial District Court of Dallas County, Texas, was submitted in support of the petition. The court found that the beneficiary's father has willfully forsaken all parental rights to the beneficiary and that he has had no contact with the beneficiary in over fifteen years and that he has abandoned the beneficiary.

In her decision reconsidering her original decision, the district director cites an interim field guidance memorandum concerning the implementation of the "express consent" amendment to the special immigrant juvenile classification:

According to the 1999 guidance, the dependency order should be accompanied by evidence that (1) the child was deemed eligible for long-term foster care on account of abuse, neglect, or abandonment, and (2) it would not be in the best interest of the child to be removed from the United States. *The mere recitation of the requisite findings in the juvenile court's order is not sufficient unless the order describes the evidence on which the findings were made.* The actual documents filed with the court, or a summary of the testimony, on which the dependency and best interest findings were made should accompany the petition.

(Emphasis added.) Pursuant to 8 C.F.R. § 103.2(b)(8), where the evidence submitted with a petitioner either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Bureau may request additional evidence. Here, the district director did not provide the petitioner an opportunity to submit additional evidence on the issue of abandonment; therefore, the district director must now provide the petitioner an opportunity to supplement the record.

The petitioner should endeavor to reconcile the evidence on the record. The birth certificate on the record indicates that the beneficiary is the daughter of [REDACTED] and [REDACTED]. The record also contains four affidavits averring that the beneficiary's father is named [REDACTED]. The petitioner provided the Bureau with a death certificate of [REDACTED] the beneficiary's purported mother.

Accordingly, this case shall be remanded to the district director so that she can request any additional evidence deemed necessary to assist her in determining whether the beneficiary was deemed eligible for long-term foster care due to abuse, neglect or abandonment. (Emphasis added.)

Specifically, the district director should provide the petitioner an opportunity to submit evidence that the beneficiary was abandoned by her father including the father's affidavit of voluntary relinquishment of parental rights, and the basis for the court's finding that the appointment of the beneficiary's father as

¹ The petitioner and purported grandfather.

² The birth certificate indicates that the beneficiary was born in Guatemala of [REDACTED] and [REDACTED].

a managing conservator (custodial parent) would significantly impair the beneficiary's physical health and emotional development.

After receipt and consideration of the additional evidence, the district director should enter a new decision.

The petitioner has overcome the director's objection that the beneficiary was not found dependent upon the court. There is no requirement that the state court decree contain the specific statement that the beneficiary is dependent upon the court. The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child's parents have relinquished control, makes the child dependent on the court.

As always, the burden of proof rests solely with the petitioner in visa petition proceedings. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.