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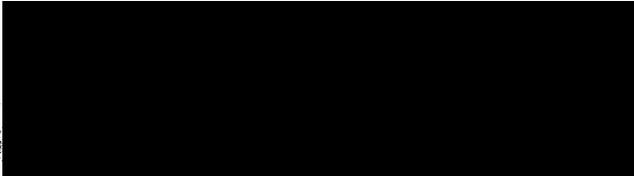
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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CG



FILE:



Office: PHOENIX, ARIZONA Date:

JAN 22 2004

IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for Special Immigrant Juvenile Pursuant to § 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4)

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 special immigrant visa petition was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on certification. The district director's decision shall be withdrawn and the petition will be approved.

The petitioner is an 18-year-old native and citizen 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).

Counsel for the petitioner filed a motion for a temporary restraining order and injunctive relief on the petitioner's behalf in the United States District Court for the District of Arizona to compel CIS to grant consent to the state court's exercise of jurisdiction over the beneficiary before the petitioner reached 18 years of age. On October 24, 2002, the Acting Director of the Office of Juvenile Affairs at CIS responded to the petitioner's March 12, 2002 request for consent to the state juvenile's court's exercise of jurisdiction over the beneficiary; hence, the petitioner withdrew its motion in District Court. The Maricopa County, Arizona Superior Court issued a dependency order on December 19, 2002. The petitioner filed the instant petition on January 2, 2003.

The district director denied the petition, stating that:

On January 29, 2003, the beneficiary, accompanied by the petitioner, was interviewed by an officer of [CIS] concerning the I-360 petition. The interviewing officer found severe credibility problems with the beneficiary's statements. He was found frequently to be vague even to the point of being unresponsive in his answers to questions, and his answers to specific question regarding abuse were guarded. [Sic.] Based on the results of that interview and a total review of the record it cannot be found that approval of the petition is warranted as the petitioner has failed to meet her burden of proof in this matter.

In his decision, the district director noted that there were discrepancies between the beneficiary's initial statements at his intake and his subsequent statements regarding abuse. The district director further noted that a CIS employee had contacted the beneficiary's mother and a neighbor in the beneficiary's hometown. According to the investigation, the beneficiary's mother verified that the beneficiary's father had been physically abusive to the beneficiary, but the neighbor had no knowledge of the petitioner's father beating or threatening his son. The district director noted that the beneficiary's mother's testimony was inconsistent because she said that the beneficiary would not be in danger should he return to Guatemala.

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 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 last entered the United States without inspection on October 30, 2001. The beneficiary was processed for removal and was placed in a juvenile detention facility. The staff at the juvenile detention facility evaluated the beneficiary and noted that the beneficiary said that he had no history of abuse and no scars. In January 2002, the beneficiary requested asylum in Immigration Court. The immigration judge granted his request, finding that his claim that his father had abused him was credible. CIS's appeal of the immigration judge's decision to the Board of Immigration Appeals is pending.

In support of the petition, counsel submits certain court records including an order of the Superior Court of Arizona for Maricopa County, dated December 9, 2002. The court found that the beneficiary "fled his homeland in an effort to escape abandonment, neglect, and/or abuse by his father and his mother's inability to protect him from his father's abuse" and deemed the beneficiary "dependent" and "eligible for long-term foster care." The court further found that given the past neglect, return of the beneficiary to the family home is not desirable and family reunification is no longer a viable option.

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is eligible for special immigrant juvenile status.

The district director determined that the evidence was insufficient to establish eligibility for special immigrant juvenile status.

The first item of evidence is the dependency order. According to the Act, a dependency order is sufficient only if two elements are established: first, a juvenile court must have deemed the juvenile eligible for long-term foster

care due to abuse, neglect, or abandonment; and second, it must have been determined in administrative or judicial proceedings that it would not be in the juvenile's best interest to be returned to the juvenile's or parent's previous country of nationality or country of last habitual residence. Section 101(a)(27)(J)(iii) of the Act, 8 U.S.C. § 1101(A)(27)(j)(III). In the instant case, the juvenile court found that the beneficiary fled his homeland in an effort to escape abandonment, neglect and/or abuse by his father and given the past neglect, abandonment and/or abuse, removal from the United States would be contrary to his best interests. The court further found that return of the beneficiary to his family home is neither likely nor desirable and hence, family reunification is not a viable option. The court found that the beneficiary is eligible for "long term foster care."

In the present case, the Maricopa County, Arizona Superior Court deemed the beneficiary eligible for long-term foster care due to abuse, neglect and/or abandonment and determined that it would not be in his best interest to be removed from the United States. *See Arizona Superior Court, Maricopa County dependency order dated December 9, 2002.* The petitioner has established the dependency order satisfies the statutory requirements in this instance.

The second item of evidence is the dependency petition that outlines the abuse the beneficiary received from his father. In a preliminary order, the court found that the allegations of the dependency petition were true by a preponderance of the evidence.

The third item of evidence is the 10-page decision of the immigration judge granting the beneficiary asylum based on the finding that the beneficiary's father inflicted physical, emotional, and psychological abuse and violence upon the beneficiary beginning when he was eight-years-old.

The fourth piece of evidence is the 37-page transcript of the testimony presented to the immigration judge at the beneficiary's removal hearing. It is noted that the beneficiary testified that he speaks Spanish and Kaqchikel (a Mayan dialect). (See page 12 of transcript dated March 29, 2002). The beneficiary's testimony in the transcript describes the abuse in detail.

The fifth piece of evidence is an affidavit of a master's level social worker who interviewed the beneficiary for one and one-half hours. The affidavit contains the beneficiary's social history and psychological assessment. The social worker stated that the beneficiary is suffering from Post-Traumatic Stress Disorder (PTSD) and noted that he revealed scars from where he claimed his father had burned him with cigarettes.

The sixth piece of evidence is the beneficiary's nine-paragraph affidavit outlining the abuse he, his siblings and mother endured from his father.

In his decision, the acting district director quoted a CIS memo for the proposition that the mere recitation of findings of eligibility for long-term foster care on account of abuse, neglect, or abandonment and evidence that it would not be in the child's best interest to be removed from the United States is not sufficient *unless* the order describes the evidence on which the findings were made. [Emphasis added.]

The July 9, 1999 CIS memo states, in pertinent part:

Evidence that a dependency order was issued on account of abuse, neglect, or abandonment, and that it would not be in the juvenile's best interest to be removed from the United States is crucial Documents filed with the juvenile court would be the most reliable evidence of these [crucial] elements . . . [h]owever, in many States documents submitted to or issued by the juvenile court in dependency proceedings may be subject to privacy restrictions. Therefore, if a dependency order does not include information establishing these crucial elements and State laws prevent court documents from being submitted to [CIS], a statement summarizing the

evidence presented to the juvenile court during the dependency proceeding and the court's findings should be sufficient evidence to establish the elements.

In review, the acting district director mischaracterized the July 9, 1999 CIS memo. Although AAO agrees mere recitation of the required elements for consent is insufficient, there is no requirement that the dependency order describe the evidence on which its findings were made. Here, the petitioner provided CIS with ample evidence that the dependency order was issued on account of abuse and that it would not be in the juvenile's best interest to be removed from the United States.

The acting district director found that the juvenile court relied on flawed evidence. It is not CIS' prerogative to review the sufficiency of the evidence presented to the juvenile court. Nonetheless, CIS may find that a dependency order alone may be insufficient to establish eligibility for special immigrant juvenile status. In review, the petitioner provided CIS with sufficient evidence to establish that the beneficiary qualifies for special immigrant juvenile status.

In his decision, the acting district director assailed the credibility of the beneficiary. The acting district director noted the following discrepancies:

- 1) Although the beneficiary's mother states that the beneficiary's father gets drunk and beats the beneficiary, she says there is no future danger to the beneficiary from his father.
- 2) The beneficiary's mother's statement that the beneficiary's father gets drunk and beats the beneficiary is inconsistent with her neighbor's statement that he has no knowledge of the beneficiary's father ever being abusive to the beneficiary.
- 3) Although it appears that the Immigration Judge found the testimony of the beneficiary to be credible, there is no express finding in his written decision to that effect.
- 4) The beneficiary informed a CIS official during his I-360 interview that he returned to his father's home in Guatemala for two weeks after his initial removal.
- 5) The CIS official conducting the beneficiary's I-360 interview had concerns about the beneficiary's credibility.
- 6) The beneficiary borrowed money from a family friend to travel to the United States. The acting district director said that it does not seem plausible that in an economy such as Guatemala's, that anyone would lend money to a juvenile without the juvenile's family's support, concurrence and/or knowledge.
- 7) A cousin of the beneficiary legally residing in the United States initially expressed intent to sponsor the beneficiary, but later declined and said that the beneficiary should return home. The acting district director reasoned that if the abuse was as egregious as the beneficiary claimed, it must have been common knowledge in the beneficiary's extended family, so it is incongruous that his cousin would suggest returning the beneficiary to his home.
- 8) According to an intake form completed November 20, 2001, the juvenile detention facility staff wrote: "no marks, cuts, burns noted on [the beneficiary's] body; subject also denied having any."
- 9) On December 19, 2001, the juvenile detention facility staff conducted a complete evaluation of the beneficiary's history and emotional state. It was noted that the beneficiary claimed no previous problems with family relations, that he gets along well with his family and he had no history of abuse.

The beneficiary's assertion that he would be in danger if he returned to Guatemala is inconsistent with his mother's assertion that he would not be in future danger should he return; however, without clarifying information, the mother's assertion cannot be evaluated. The beneficiary's mother did not provide testimony in a court of law. A CIS employee contacted her at the behest of the district director. The exact questions put to the beneficiary's mother were not recorded.

The beneficiary's mother's statement is inconsistent with her neighbor's statement. Again, the exact questions and answers were not recorded. The beneficiary's mother, rather than her neighbor, is in a better position to know whether her husband beat her son.

By granting the beneficiary asylum on the basis of past persecution by his own father, the immigration judge implicitly made a favorable credibility determination.

There is no evidence in the record to substantiate that the beneficiary told a CIS official that he returned to his father's home. Even if true, it does not necessarily undermine the beneficiary's credibility.

There is no record of the CIS officer's I-360 interview of the beneficiary, so it is impossible to evaluate the CIS officer's concerns. It is further noted that the beneficiary indicated that his native language is Kaqchikel, not Spanish, so questions arise as to the quality of translation provided to the parties.

Items six and seven are supposition.

Items eight and nine may have merit, but query whether anyone gave the beneficiary the opportunity to explain these discrepancies. It is noted that the trial attorney failed to raise these issues during the beneficiary's removal hearing, or on appeal to the Board of Immigration Appeals.

In review, the weight of the evidence favors the beneficiary.

A third issue shall be addressed in this proceeding. In his decision, the acting district director stated that CIS "is also very concerned that there is a total lack of certainty in the beneficiary's identity. Although he has submitted a birth certificate . . . it is unknown whether the birth certificate is authentic [or belongs to the beneficiary]." The acting district director indicated that because the beneficiary had initially misrepresented his name, birth date and nationality to border patrol officers, his identity was suspect. The petitioner satisfied her burden of proof of establishing the beneficiary's identity.

The acting district director quoted congressional testimony that juvenile courts are only interested in the financial burden on the state, and if there is none, they are granting dependency orders. The acting district director is challenging the findings of a specific juvenile court on the basis of a general concern about the integrity of the legal process. It is incumbent upon CIS to make case-by-case determinations on each individual petition rather than second-guess the motivation of the juvenile court judge.

The acting district court found that the juvenile court determined that the beneficiary was eligible for long term foster care only sixty-four days before the beneficiary's eighteenth birthday, when, under Arizona State law, any dependency on the juvenile court terminates at age 18.¹ It is noted that counsel for the petitioner sought the Secretary's consent to the juvenile court assuming jurisdiction over the beneficiary beginning on March 12, 2002, but did not receive the Secretary's consent until seven months later and after counsel for the petitioner filed a motion for a restraining order and injunctive relief in federal court. There is no requirement that the beneficiary be found eligible for long-term foster care long before he reaches the age of maturity.

¹ A.R.S. § 8-202 et. seq.

Finally, the acting district director ruled that because the beneficiary has remained in CIS custody, the juvenile court has never fully assumed the dependency of the beneficiary. The AAO finds that the juvenile court deemed the beneficiary eligible for "long term foster care" due to parental abuse. The acting district director's construction of the law is without basis.

The petitioner has established the dependency order satisfies the statutory requirements in this instance. The evidence on the record contains ample corroborating evidence of abuse, neglect and abandonment.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained.