



U.S. Citizenship
and Immigration
Services

C6

[Redacted]

FILE:

[Redacted]

Office: MIAMI, FL

Date:

MAY 13 2004

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]

Identifying information related to
prevent disclosure of warranted
invasion of personal privacy

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

PUBLIC COPY

DISCUSSION: The special immigrant visa petition was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The beneficiary is a 19-year-old native¹ and citizen of Haiti. The petitioner is the beneficiary's attorney. On August 22, 2000, an Adjudicative Order was issued by the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Juvenile Family Division, adjudicating the beneficiary a dependent. The court also granted an Order Regarding the Minor's Eligibility for Special Immigrant Status under U.S.C. § 1101(a)(27)(J) ruling that it would not be in the interest of the child to return to Haiti. The petitioner seeks classification of the beneficiary 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), so that the beneficiary may remain in the United States.

The district director denied the petition because the beneficiary misrepresented his true situation with regard to his parents to the juvenile court and to the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)]. See *Decision of the Acting District Director for Services*, dated March 24, 2003 and *Superseding Decision of the District Director*, dated November 27, 2003.

On appeal, counsel asserts that the beneficiary lacks the requisite intent to present false information regarding his dependency petition and that he meets the requirements to be declared dependent. Counsel contends that the beneficiary maintains that he has not personally been in contact with his parents for approximately three years. See *Attachment to Form I-290B*, dated December 11, 2003.

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 [now Secretary of Homeland Security (Secretary)] 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 [Secretary] unless the Attorney General [Secretary] specifically consents to such jurisdiction; and

¹ The AAO notes that the record reflects three different birth dates for the beneficiary: May 9, 1985, May 8, 1984 and May 9, 1984. The AAO recognizes the date reflected on the beneficiary's Haitian birth certificate as his official birth date.

(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 § 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 entered the United States on December 19, 1999 presenting a photo-substituted United States passport. The applicant was processed for removal and detained pending a hearing with an Immigration Judge. The applicant was released to Catholic Charities and was subsequently placed in the care of his sister on December 29, 1999.

In support of the petition, counsel submits certain court records including an Affidavit Verifying Parent's Death and of Diligent Search and Inquiry, dated August 8, 2000 and signed by counsel for the beneficiary. The affidavit states that the beneficiary and his sister stated, "[t]hey were sure that her [sic] parents were deceased. They stated that their mother disappeared [sic] 1997, and they never knew their father, and were told that their father was deceased." The affidavit also lists several county, state and federal agencies contacted by counsel in an effort to locate the beneficiary's parents. The affidavit concludes by stating, "[a]fter a careful diligent search, the whereabouts of said child's parents remain unknown."

The record reflects that the beneficiary's sister arrived in the United States from Haiti on July 23, 1999 presenting a photo-substituted Haitian passport and I-551 resident card. The AAO notes that court documents submitted by counsel in support of the beneficiary's petition reflect that the documents were prepared to represent the interests of both the beneficiary and his sister.

The Adjudicatory Order of the Circuit Judge approved the Affidavit Verifying Parent's Death and of Diligent Search and Inquiry and found the beneficiary to be dependent for the following reasons:

1. The child has not had any contact or received any support whatsoever from her father for approximately three years.
2. The child has not had any contact or received any support whatsoever from her mother for approximately three years.

See Adjudicatory Order, dated August 22, 2000.

The issue in this proceeding is whether the Attorney General [Secretary] properly withheld his consent to the dependency order. This consent is an absolute statutory prerequisite to the granting of a special immigrant juvenile petition. INA § 101(a)(27)(J)(iii). Since the statute provides no standards indicating when the Attorney General [Secretary] should, or should not, grant this consent, whether to grant this consent is necessarily a matter entrusted to the Attorney General [Secretary]'s discretion.

As stated above, the applicant was released from Service [now Immigration and Customs Enforcement (ICE)] custody and placed in the care of his sister. In cases of juveniles not in the custody of the Service [ICE] such as this petition, the Attorney General [Secretary]'s consent to the dependency order must be obtained as a precondition to the grant of special immigrant juvenile status. 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. INA § 101(a)(27)(J)(iii).

To request the Attorney General [Secretary]'s consent, the court, state agency, or other party acting on behalf of the juvenile must provide the Service [CIS] with documentation which establishes abuse, neglect, or abandonment as the underlying cause for the court's dependency order.

In the present petition, the petitioner did not submit sufficient evidence to establish that abuse, neglect, or abandonment served as the underlying basis for determining the juvenile dependent on the court. The judge entered a default finding after the parents of the juvenile failed to appear. As a result, the record does not contain sufficient evidence or court findings of fact to support the claim that the juvenile was abandoned. The court did not enter the dependency order on the basis of evidence or testimony, but rather "by default" of the beneficiary's parents after they failed to appear for the proceeding.

The applicant's parents, however, were not given actual notice of the court proceedings, as the court accepted counsel's affidavit verifying their death after diligent search and inquiry. Although counsel asserts that the location of the parents is unknown, the record indicates otherwise. The allegations of abandonment and neglect are based solely on the unsupported assertions of the beneficiary, as the parents of the child were never contacted or given actual notice of the proceedings and did not testify.

The record of proceedings does not contain any detailed evidence or testimony describing the alleged abandonment suffered by the beneficiary. Instead, the entire claim of abandonment is premised on the unsupported allegations of the beneficiary. While counsel contends that this approach is necessitated by the

death of the beneficiary's parents, the record reflects that the beneficiary's mother sent a letter to the Service [CIS] on the day after the beneficiary arrived in the United States expressing "great joy" upon learning that the beneficiary was "in the hands of Immigration." See Letter from [REDACTED] dated December 20, 1999. The letter further expresses the desire of the beneficiary's mother that the beneficiary reside with his two older siblings already present in Florida. *Id.* Based on this correspondence, it is clear that the beneficiary's mother was alive at the time of the beneficiary's arrival in the United States thereby casting doubt on the testimony of the beneficiary alleging her to be dead or her whereabouts to be unknown.

In a memorandum giving interim guidance on special immigrant juvenile benefits as defined by amendment to the Act, the Acting Assistant Commissioner for Adjudications wrote:

On November 26, 1997, President Clinton signed Public Law 105-119 (Sec. 113) amending the Immigration and Nationality Act provisions relating to special immigrant juveniles. The amended law more clearly defines and restricts who may benefit from this provision, specifying that only juveniles declared dependent on a juvenile court, or placed in the custody of an agency of the state, and deemed eligible for long-term foster care *due to abuse, neglect or abandonment* may be granted this status. The insertion of this new language makes clear the intent of Congress that relief is reserved for children who are victims of those particular circumstances and conditions. In the past, individuals who did not suffer abuse, abandonment, or neglect were known to have sought the court's protection merely to avail themselves of legal permanent resident status. This amendment ensures that this will no longer be possible. INS Memorandum HB/70/6.1P, "Interim Field Guidance relating to Public Law 105-119 (Sec. 113) amending Section 101(a)(27)(J) of the INA - Special Immigrant Juveniles" (October 15, 1998). (Emphasis in original.)

In the instant case, the beneficiary has not clearly been deemed eligible for long-term foster care due to abuse, neglect or abandonment. The Attorney General [Secretary] properly withheld his consent to the dependency order given the court's manifest intention.

The petitioner has failed to establish that the beneficiary qualifies as a special immigrant juvenile pursuant to sections 203(b)(4) and 101(a)(27)(J) of the Act. The court entered the orders in this case based solely on the allegations of the beneficiary, the veracity of which is called into question by correspondence received by the Service [CIS] from his mother. On the facts of this case, it would be an abuse of discretion to consent to the dependency order and approve the petition.

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 not met that burden. Therefore, the appeal will be dismissed. As determined by the district director, the Attorney General [Secretary] does not consent to the dependency order.

ORDER: The appeal is dismissed.