



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SAN ANTONIO

Date: DEC 05 2005

IN RE: Petitioner:

Beneficiary:



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:

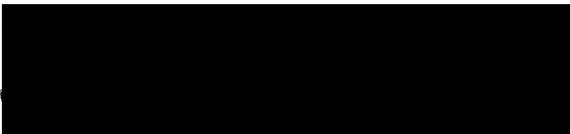
SELF-REPRESENTED

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

cc:



DISCUSSION: The Interim District Director for Benefits, San Antonio (district director) denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The beneficiary is a twenty-three-year-old native and citizen of Thailand 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 district director issued a decision on December 4, 2003, denying the visa petition citing the fact that although the district office had requested additional evidence demonstrating that the beneficiary had been deemed eligible by the juvenile court for long term foster care due to abuse, neglect, or abandonment, no such evidence was submitted, nor was any explanation provided. *See Decision of the Interim District Director for Benefits*, dated December 4, 2003. The district director's decision cited the applicable statutory and regulatory provisions noting that a finding of eligibility for long term foster care was required, and absent such evidence, the applicant had not met the burden of proof to demonstrate eligibility for the visa. Accordingly, the district director denied the Petition for Special Immigrant Juvenile (Form I-360). *Id.*

On appeal, the couple with whom the beneficiary resides, have submitted letters and several documents relating to the juvenile court proceedings in support of their assertions on appeal.¹ The applicant's position on appeal is that the beneficiary was found to be a dependent of the court and that the record reflects that they have otherwise satisfied the applicable statutory and regulatory requirements. The entire record has been reviewed in rendering this decision.

Before reviewing the arguments and evidence offered in support of the appeal, it is appropriate to review the applicable statutory and regulatory provisions. 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 [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

¹ The couple, [REDACTED] (the applicant), and his wife, [REDACTED] were appointed guardians for the beneficiary. [REDACTED] submitted the Form I-360 on the beneficiary's behalf. Although the couple is not represented by counsel, the AAO is sending a copy of the decision to attorney [REDACTED] who had been appointed guardian ad litem for the beneficiary during the guardianship proceedings, and who submitted a letter as evidence in support of the appeal.

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

Information contained in the record reflects that the beneficiary initially entered the United States in 1998, at the age of sixteen, pursuant to a J-1 visa, and enrolled in the 10th grade.² She resided with the applicant and his wife in Copperas Cove, Texas. On June 2, 2000, the couple filed a motion with the Coryell County Court in Texas, entitled *Application for Appointment of Permanent Guardian of the Person* (hereinafter, "Guardianship Application"). The application sought to have the couple appointed guardians for the beneficiary. The reason given for the request to be appointed as guardians was in order to allow the beneficiary, described to the court as a visiting exchange student, to continue to reside with the couple and to enable them to provide for her medical care. *Id.* The application was granted by a presiding judge on June 23, 2000. *See Order Appointing Permanent Guardian of the Person*, dated June 2, 2000. The beneficiary was seventeen years old at the time that the motion was filed, and turned eighteen, three days later, prior to the issuance of the court's order on June 23, 2000. The record also contains three status updates of the beneficiary's guardianship submitted by the applicant and his spouse.³ The reports, written and submitted by the couple, provide details about the beneficiary's activities in the United States, including her educational pursuits, health status and extra-curricular activities. *See Yearly Reports Relating to the Guardianship of Kuakarn Saichua*, dated June 23, 2000; August 6, 2001; and June 28, 2002.

² The information in the file reflects that the beneficiary stated during her interview that she had entered the United States on a J-1 visa. Other statements in the file indicate that she is in the United States on an F-1 student visa. It is possible that she entered pursuant to a J-1 visa and subsequently converted her status to that of an F-1 student.

³ The guardianship reports are also accompanied by documents described by the guardians as "Copy of Official Receipt of the 2003 Yearly Report" which appear to be receipts reflecting payments made by the guardians or the beneficiary.

The applicant/guardian filed the Form I-360 on the beneficiary's behalf on January 24, 2002. In support of the petition, the applicant submitted the previously described application for and order of guardianship filed with the Texas court and the resulting court order.⁴

The record reflects that the applicant and beneficiary were scheduled for an interview regarding the I-360 on June 18, 2003.⁵ At the interview, the beneficiary stated that she had originally entered the United States to attend the 10th grade and had received financial support from her biological parents. However, she stated that she did not request additional financial support from them. The applicant/guardian stated that the beneficiary was unable to return to Thailand because her biological parents felt that it was best for the beneficiary that she remain in the United States.⁶ The district director's decision reflects that the applicant was given a Request for Evidence, asking that documentation be submitted reflecting that the beneficiary "has been deemed eligible by that court for long term foster care due to abuse, neglect, or abandonment." The petition was subsequently denied on December 4, 2003, on the basis that the requested evidence had not been submitted.

On appeal, the guardian/applicant offers several documents in support of the appeal. The following is a brief description of each document submitted. Included in the record are the guardians' own statements which consist of a hand-written statement from Mrs. [REDACTED] dated July 13, 2005, and a typed statement from Mr. [REDACTED], undated. The submission also included: 1) a letter from Judge Susan R. Stephens, Coryell County Judge, dated December 30, 2003, describing the guardianship order issued by Judge John H. Hull; 2) a letter from [REDACTED] who had been appointed as guardian ad litem for the beneficiary; 3) a copy of the previously described guardianship order dated June 23, 2000; 4) a copy of the previously described application for appointment of a permanent guardian dated June 2, 2000; 5) copies of the previously noted waivers of service executed by the beneficiary's biological parents; and 6) copies of the three yearly reports on guardianship submitted to the court, and previously described.

An examination of the documents submitted in support of the appeal fails to establish that the applicant has demonstrated that the evidence establishes that the beneficiary qualifies for special immigrant juvenile status pursuant to the statutory or regulatory requirements. In addition, the AAO finds that the documents offered demonstrate a completely different legal arrangement than that recognized by the statute authorizing SIJ status.

First, as noted by the district director, the applicants have failed to satisfy the statutory requirement that the beneficiary is an individual present in the United States:

- (iv) 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;

⁴ The applicant/guardian also submitted documents signed by the beneficiary's biological parents entitled "Waiver of Service" which are dated June 9, 2000, and which reflect that they consent to the guardianship and waive future notice regarding the proceedings.

⁵ At the time of the interview, the applicant was over eighteen years of age, having turned twenty-one on June 5, 2003.

⁶ It appears that the parents have adequate employment, with the mother working at a bank and the father holding a position in which he sells petroleum to the government.

The AAO believes that the applicant has equated the guardianship granted by the Coryell County Court in Texas as being equivalent to the required finding that the beneficiary is dependent on a juvenile court and will be committed or placed under the custody of a State agency or department based on a finding that the alien is eligible for long term foster care due to abuse, neglect, or abandonment. A review of the evidence, along with an examination of relevant sections of the Texas State Code supports a finding that the guardianship proceedings successfully pursued by the applicant and his wife do not satisfy the requirements of immigration law that must be established in order to accord the beneficiary SIJ status.

An examination of the *Application for Appointment of Permanent Guardian of the Person*, filed by the applicant with the court indicates that it was being submitted pursuant to Section 682 of the Texas Probate Code. See *Application for Appointment of Permanent Guardian of the Person*, dated June 2, 2000, at p. 1. An examination of the Texas Statutes indicates that Chapter XIII of the Probate Code is the chapter dealing with guardianships and consists of sections 601 through sections 905. See *TEX. PROB. CODE §§ 601-905 (2003)*.⁷ The motion itself indicated that the beneficiary was a seventeen year-old visiting exchange student who wished to continue her education in the United States while residing with the applicant and his spouse. *Id.* at pp. 1-2. The motion further stated that the couple was seeking the guardianship of the minor in order to be able to provide for her medical care. *Id.* This would be consistent with one of the principal purposes of guardianships under Texas law, which is to provide care for an incapacitated person.

§ 602. Policy; Purpose of Guardianship

A court may appoint a guardian with full authority over an incapacitated person or may grant a guardian limited authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the person. If the person is not a minor, the court may not use age as the sole factor in determining whether to appoint a guardian for the person. In creating a guardianship that gives a guardian limited power or authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person.

See *TEX. PROB. CODE §§ 602 (2003)*.

An individual's status as a minor is one of the justifications for a guardianship under Texas law. Section 601 of the probate code at subsection 14, defines an incapacitated person as follows:

- 14) "Incapacitated person" means:
- (A) a minor;
 - (B) an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs; or

⁷ While an examination of the Texas statutes indicates that there have been amendments to various provisions of the Texas Probate Code in the 2001 and 2003, none of those amendments appears to affect the provisions at issue in this case in any material sense. The Texas statutes can be found at www.capitol.state.tx.us/statutes.html.

(C) a person who must have a guardian appointed to receive funds due the person from any governmental source.

See TEX. PROB. CODE §§ 601 (2003).

Finally, a minor is further defined under section 601 as follows:

(16) "Minor" means a person who is younger than 18 years of age and who has never been married or who has not had the person's disabilities of minority removed for general purposes.

See TEX. PROB. CODE §§ 601 (2003)

The application was filed three days before the applicant's eighteenth birthday on June 5, 2000. While she qualified as a minor prior to the entry of the order, pursuant to the Texas probate code, the guardianship terminates upon a minor's attainment of majority.

§ 694. Term of Appointment of Guardian

(b) The guardianship shall be settled and closed when the incapacitated person:

- (1) dies and, if the person was married, the person's spouse qualifies as survivor in community;
- (2) is found by the court to have full capacity to care for himself or herself and to manage the person's property;
- (3) is no longer a minor; or**
- (4) no longer must have a guardian appointed to receive funds due the person from any governmental source.

*See TEX. PROB. CODE §§ 694 (2003)*⁸(emphasis supplied).

It is unclear why the Texas court in this case nonetheless granted the motion and issued an order appointing the applicant as guardian after the applicant had attained the age of majority. There is, however, no indication in the motion filed or the court's order that the guardianship was issued for any other reasons than those stated, i.e., the beneficiary's status as a minor for whom the applicant needed to be able to authorize medical care during her stay in the United States.

Even more importantly, there is no evidence in the record that the beneficiary has been deemed eligible by a court for long-term foster care due to abuse, neglect, or abandonment as required by the applicable statutory and regulatory requirements. Such a determination is the essence of eligibility for SIJ status. In a relatively recent decision, the Third Circuit Court of Appeals upheld the Attorney General's denial of consent to an SIJ proceeding for an alien based on the district director's finding that the SIJ status was being sought for the purpose of obtaining permanent resident status, rather than seeking relief from abuse, abandonment, or neglect. *See Yeboah v. INS*, 345 F.3d 216 (2003). In reaching its decision, the court reviewed the SIJ provisions of the Act, and the amendments to those provisions. It noted that in their original form "the SIJ provisions of the INA were enacted in 1990 to protect abused, neglected, or abandoned children who, with

⁸ A review of the legislative history of the provision indicates that it was added in 1993, and amended thereafter, in 1995, and 1999.

their families, illegally entered the United States." *Id.* at 221. The court cited to the statement of Senator Domenici made during congressional budget hearings in which he cited to abuses of the SIJ process in support of amendments to the original provisions being considered by Congress.

This is a giant loophole . . . every visiting student from overseas can have a petition filed in a state court . . . declaring that they're a ward and in need of foster care . . . [and] they're granting them.

Hearings on the FY '98 Budget Request of the Justice Department Before the Appropriations Subcommittee on Commerce, Justice, State and the Judiciary of the Senate Appropriations Comm., 105th Cong. (1997)(cited in Yeboah, supra.)

The court noted that amendments were made to the SIJ provisions in order to "limit the beneficiaries of this provision to those juveniles for whom it was created, namely abandoned, neglected, or abused children . . ." *Yeboah*, at 222 (citing to H.R. Rep. No. 105-405, at 130 (1997)).

In the instant case, the record reflects that the applicant and his wife pursued guardianship proceedings to be able to provide medical care for the beneficiary during her course of studies in the United States. The record does not reflect that the proceedings were undertaken on the basis of any abandonment, neglect, or abuse of the beneficiary as is required by the law. The documents reflecting the proceedings before the state court do not reflect that any of those underlying reasons were behind the proceedings initiated before the state court. Rather, the guardianship proceedings were proceedings undertaken for the understandable, yet limited purpose of providing for the medical needs of a visitor to the United States. This is an insufficient basis for SIJ status under the law.

However, even assuming that the applicant's guardianship continued by reason of some other basis of incapacity, besides the beneficiary's age, that is not apparent from the record, a review of the Texas statutes indicates that a guardianship proceeding is a process separate and apart from the determination that a minor has been declared dependent upon a juvenile court and eligible for long term foster care. Under Texas law, the procedures under which a minor would be deemed dependent upon the court and eligible for long term foster care are not contained in the guardianship provisions of the probate code, but rather in the Texas Family Code, and specifically, Title 5 of that Code entitled, "The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship." These statutory provisions, which encompasses matters such as the placement of children in foster care, the termination of parental rights and other actions consistent with the state assuming responsibility for the care and placement of neglected, abused, or abandoned children. *See TEX. FAMILY CODE Title 5, Chapters 101 to 265 (2003).*

The additional documents submitted by the applicant do not further the beneficiary's case. The letter submitted by Judge Susan R. Stephens, of the Coryell County Court, simply indicates that Judge John H. Hull, Judge of the County Court of Coryell County, Texas had "entered an order appointing [redacted] and wife, [redacted] as the guardians of the person of [redacted] an incapacitated person." The letter goes on to state that the court is a constitutional court and such courts have original jurisdiction over probate and guardianship matters." *See Letter from Judge Susan R. Stephens*, dated December 30, 23003. While the AAO does not dispute the contents of the letter, it only serves to establish

what is already apparent from the court order, i.e., that the applicant and his spouse were appointed guardians. It does not, and based on the contents of the order, *cannot* serve as evidence that the 2003 court order found the beneficiary to be dependent upon a juvenile court and eligible for long term foster care based upon a finding of abuse, neglect, or abandonment.

Likewise, the letter from attorney [REDACTED] does not make an assertion as to the effect of the order. Her letter simply provides that she had been appointed guardian ad litem for the beneficiary. While the letter goes on to state that the court has authority to hear juvenile cases, and that the beneficiary was deemed a "dependent" by the court, *see Letter from [REDACTED]* dated December 30, 2003, the AAO does not find the statement to be persuasive on the issues raised by this case. Whether the court that entered the order had the power to hear juvenile cases is really not the issue. Rather, the issue is whether the court made the findings set forth in the applicable immigration statutes and regulations. Moreover, the assertion that the beneficiary was deemed a dependent is not borne out by the contents of the order. While it describes here as a "ward," that is simply the term under the Texas probate code used to describe the individual for whom a guardian was appointed. *See TEX. PROB. CODE §601 (2003)*.

Finally, even if the documentation provided indicated that the beneficiary had been declared dependent upon a juvenile court and eligible for long-term foster care, the record reflects that the beneficiary turned twenty-one on June 5, 2005, and as such, fails to satisfy the regulatory requirement that she be under the age of twenty-one in order to be eligible for classification as a special immigrant juvenile. 8 C.F.R. § 203.11(b)(1) that an applicant be under twenty-one years of age.⁹

Consequently, on the basis of the previous discussion, the AAO does not find that the applicant has established that the Texas court proceedings establish that the proceedings satisfy the statutory requirements relating to SIJ status. Moreover, the beneficiary, as an adult of twenty-three years of age is not eligible for special immigrant status, nor was she eligible at the time of the issuance of the guardianship order. Moreover, the applicant, through the information provided on the I-360 petition, had likewise acknowledged that the beneficiary is not eligible for long term foster case. *See I-360 Petition*, dated January 10, 2002.

The AAO finds that the documents offered on appeal do not satisfy the applicant's burden to demonstrate that the beneficiary qualifies under the laws of Texas for long term dependent care, and as such she is no longer eligible for special immigrant juvenile status. In visa petition proceedings, the burden of proof is on the petitioner to establish eligibility for the benefit sought by a preponderance of the evidence. *Matter of Brantigan*, 11 I&N Dec. 151 (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 petitioner has not proven eligibility for the benefit sought.

⁹ The AAO notes further, that even if it were not the case that the applicant was ineligible for special immigrant status due to her age, the record does not clearly establish that CIS should give its express consent to the juvenile dependency order which requires that the district director "determine that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect [or abandonment.]" *See* H.R. Rep. No. 105-405, at 130 (1997). Although it was not necessary to reach that issue for purposes of this office's review of the district director's decision, the AAO notes that all indications in the record are that the beneficiary was sent to the United States to study, and while her family initially provided financial support, no further support has been sought from them. The beneficiary came to the United States due to a desire by her family to improve her situation, rather than out of any neglect, abuse, or abandonment.

ORDER: The appeal is dismissed.