



U.S. Citizenship  
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FILE: [Redacted]

Office: MIAMI

Date: JUN 13 2005

IN RE: Petitioner: [Redacted]  
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:

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

**DISCUSSION:** The District Director, Miami 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-one-year-old native and citizen of Mexico 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 August 23, 2004, denying the visa petition citing the fact that the beneficiary had reached eighteen years of age on April 24, 2002, and was no longer, by operation of Florida law, considered to be dependent upon the juvenile court. The district director concluded that the applicant was therefore no longer eligible for long-term foster care and was thus ineligible for the benefit sought. *See Decision of the District Director, dated August 23, 2004.*

On appeal, the beneficiary has submitted a written statement in support of the appeal. The brief statement states that she was required to leave the foster care program in October 2003, because she had reached the age of eighteen, and was ineligible to be assigned to the independent living program because she did not have her "immigration paper."<sup>1</sup> The beneficiary goes on to state that she does not have family in Mexico, fears return to Mexico because of past sexual abuse, and feels safe in the United States.

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 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:

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<sup>1</sup> Presumably, the beneficiary means that she did not have a recognized lawful immigration status.

- (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 without inspection on January 15, 2000, near Laredo, Texas. She was found to be a juvenile dependent by virtue of the Dependency Order dated June 12, 2001, issued by the Circuit Court of the Eighteenth Judicial Circuit in and for Seminole County, Florida. The beneficiary was seventeen years old at that time. The record also contains two status reviews of the beneficiary's dependency status conducted on December 12, 2001, and again on April 17, 2002. The second report contains the notation that the beneficiary would continue to be a dependent of the department until reaching the age of eighteen on April 25, 2002. *See Judicial Review Social Study Report/Case Plan Update*, dated April 17, 2002.

The beneficiary simultaneously filed a Petition for Special Immigrant (Form I-360), and an Application for Adjustment of Status (Form I-485) on September 25, 2001. In support of the petition, the beneficiary submitted various records filed with or issued by the Florida state court. Among the records are the previously mentioned dependency order and status reports issued by or filed with the Circuit Court of the Eighteenth Judicial Circuit of the State of Florida In and For Seminole County.

The record reflects that on June 4, 2004, the applicant was scheduled for an interview on the petition and was asked to provide additional documentation. The interview was held on or about June 16, 2004.<sup>2</sup> The petition was subsequently denied on August 23, 2004 on the basis that the applicant ceased being dependent upon the juvenile court on April 25, 2002, when she reached the age of eighteen. The Florida statutes contained at Title V, Chapter 39, referenced by the district director provide as follow:

39.01(12) "Child" or "youth" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

39.013(2) The circuit court shall have exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency. . .

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<sup>2</sup> At the time of the interview, the applicant was over eighteen years of age, having turned eighteen on April 25, 2002.

When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age.

The district director found that because the beneficiary had reached the age of majority under Florida law, she was no longer under the jurisdiction of the family court system by virtue of having aged out of its jurisdiction. Consequently, she was no longer eligible for special immigrant status. *See Decision of the District Director*, dated August 23, 2004.

On appeal, the beneficiary acknowledges that she has reached the age of eighteen and is no longer eligible for foster care. She also notes that she was ineligible to be assigned to an independent living program because she did not have immigration documents. She requests to be allowed to remain in the United States due to the absence of family in Mexico and her fear of returning there.

While the AAO may be sympathetic to the beneficiary's concerns, it is unable to find that the district director's decision was erroneous. The applicant is no longer qualified under the laws of Florida for long term dependent care, and as such she is no longer eligible for special immigrant juvenile status. The applicant does not assert that the district director erred in his findings of fact or conclusions of law. Moreover, it appears that the applicant is now over twenty-one years of age, and as such no longer meets the regulatory eligibility requirements of 8 C.F.R. § 203.11(b)(1) that an applicant be under twenty-one years of age.

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.

**ORDER:** The appeal is dismissed.