

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. A3042
Washington, DC 20529

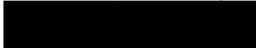


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

06

FILE:



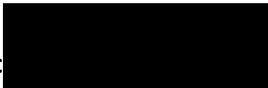
Office: MIAMI

Date:

JUN 14 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 an eighteen-year-old native and citizen of Jamaica 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 16, 2004, denying the visa petition citing the fact that the beneficiary had reached eighteen years of age on May 26, 2004, 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 16, 2004.

On September 16, 2004, counsel filed a Notice of Appeal (Form I-290B), and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. The Form I-290B included a brief statement regarding the reasons for appeal. That statement simply asserts that Citizenship and Immigration Services (CIS), has adjudicated Special Immigrant Juvenile petitions consistent with the requirements of the law for several years, but has now adjudicated the beneficiary's petition based on a new interpretation of the law. Counsel does not elaborate on this assertion, and although counsel indicated that a brief and/or additional evidence would be submitted within thirty days, CIS has not received any submission from counsel.

Counsel has made only a generalized assertion and has not elaborated on her claim by demonstrating how the beneficiary remains eligible for Special Immigrant Juvenile status. The assertion that the district director denied the application based upon a new interpretation of the statute is not accompanied by any explanation as to what the new interpretation was, and why the district director's reasoning was deficient.

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.