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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: MIAMI

Date: JUN 14 2005

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]

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 nineteen-year-old native and citizen of Haiti 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 5, 2004, denying the visa petition citing the fact that the beneficiary had reached eighteen years of age on August 2, 1984 [sic],¹ 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 5, 2004.

On August 18, 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 stated that although the beneficiary was eighteen-years-old, she was eligible for independent living through the department of Family Services, and the juvenile court had found her to be dependent and eligible for long term care. The AAO has not received counsel's brief or any additional evidence.

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 beneficiary may remain eligible for an independent living arrangement appears to be an issue separate from the issue of whether she remains eligible, under Florida law, for long-term care as a dependent child.

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.

¹ The district director mistakenly referenced 1984, the beneficiary's year of birth, rather than 2002, which is the year that the beneficiary turned eighteen. While this is a factual error, it had no bearing on the district director's decision, nor did it reflect a mistake in the conclusion that the applicant had attained the age of eighteen, a fact that counsel concedes.