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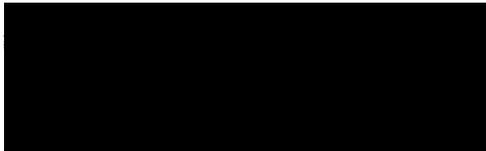
FILE: [REDACTED] Office: PORTLAND, OR

Date: MAY 10 2005

IN RE: Petitioner: [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:



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 special immigrant visa petition was denied by the District Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 21-year-old native and citizen of El Salvador. He 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), as described in section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J).

The district director determined that the petitioner's release from immigration custody on bond, did not constitute a release from government custody, as set forth in section 101(a)(27)(J)(iii) of the Act. The district director determined further that the petitioner had failed to establish that the Attorney General had consented in the petitioner's case, to jurisdiction for juvenile court dependency proceeding purposes.

On appeal, counsel asserts that the petitioner was not required to obtain Attorney General consent for juvenile court jurisdiction purposes, because the petitioner was released on Immigration and Naturalization Service bond, and was thus not in the actual or constructive custody of the Attorney General. Counsel asserts that the petitioner was eligible for special immigrant juvenile status (SIJS) because a juvenile court found in 1998, that he was a dependent of the court due to abuse, neglect or abandonment, and that it would not be in the petitioner's best interest to be returned to his country. Counsel asserts that the district director therefore erred in not approving the petitioner's SIJS petition. Counsel alternatively asserts that if Attorney General consent was required, the district director abused his discretion in denying, without explanation, consent for juvenile court jurisdiction over the petitioner's juvenile dependency proceedings, because the evidence established that the petitioner was eligible for special immigrant juvenile status, and that a dependency order would be in the petitioner's best interest.

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. Section 101(a)(27)(J) of the Act defines "special immigrant juvenile" in pertinent part as 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 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

The regulatory provisions contained in Title 8 of the Code of Federal Regulations (8 C.F.R.) section 204.11(c), clarify that 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 evidence in the record reflects that the petitioner was born in El Salvador on November 19, 1983. He therefore turned 21-years-old on November 19, 2004. The AAO notes that a November 24, 2004 letter to the AAO, written by counsel, also confirms that the petitioner turned 21 on November 19, 2004. The AAO finds that the petitioner is therefore ineligible for classification as a special immigrant juvenile, as set forth in 8 C.F.R. § 204.11(c)(1) and pursuant to section 101(a)(27)(J) of the Act. Because the petitioner is ineligible for special immigrant juvenile status based on his age, the AAO finds it unnecessary to address whether Attorney General consent was required for juvenile court jurisdiction in the present matter, or whether the district director erred in denying consent.

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 his burden. Therefore, the appeal will be dismissed.

**ORDER:** The appeal will be dismissed.