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FILE:



Office: MIAMI

Date:

JUN 05 2007

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.

Robert P. Wiemann, Chief  
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 sustained.

The applicant is a eighteen-year-old native and citizen of Mexico who seeks classification as a special immigrant juvenile (SIJ) 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 October 12, 2006 denying the petition for SIJ status. Specifically, the district director found that the applicant failed to establish her identity or show that she was abused, neglected, or abandoned, such that the Department of Homeland Security (DHS) should consent to her best interest order serving as a precondition to a grant of SIJ status under section 101(a)(27)(J)(iii) of the Act.

On appeal, counsel for the applicant contends that the district director exceeded her authority by disregarding the order of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Juvenile Division ("juvenile court") and making her own determination of whether the applicant has been abused, abandoned, or neglected by her parents. *Statement from Counsel on Form I-290B*, dated November 12, 2006.

The record contains a brief from counsel in support of the appeal; a statement from counsel on Form I-290B; a copy of the applicant's passport; a copy of the applicant's birth certificate; a document issued to the applicant by the General Consul of Mexico in Miami, Florida titled Proof of Presumption of Nationality; a best interest order and amended best interest order issued by the juvenile court; a predispositional report regarding the applicant by an operator of a foster care home, Neighbor to Family; an order from the juvenile court issued after the district director's denial titled Order Regarding Eligibility for Special Immigrant Juvenile Status; an order from the juvenile court reflecting that it is maintaining jurisdiction over the applicant until her twenty-second birthday; documentation in connection with the applicant's arrest for theft; a letter from Neighbor to Family reflecting that the applicant was under the care of the Department of Children & Families of the State of Florida, and; a letter reflecting that the applicant enrolled in English language classes. The entire record was considered in rendering a decision on the current appeal.

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:

- (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 . . . .

On September 27, 2005, the juvenile court issued an order finding that: the applicant is dependent on the court due to abuse, neglect, or abandonment; the applicant's father transported the applicant from Mexico to the United States and then abandoned her, and the applicant's mother has done nothing to regain custody of her; the applicant is eligible for long-term foster care in the State of Florida and family reunification is not a viable option; it is not in the applicant's best interests to be returned to Mexico; it is in the best interests of the applicant to remain in the United States, and; the court will maintain jurisdiction to ensure that the applicant satisfies the requirements for SIJ status, particularly the regulation at 8 C.F.R. § 204.11(c)(5). *Best Interest Order of the Juvenile Court*, dated September 27, 2005. The record contains a predispositional report that was under consideration by the juvenile court that describes the applicant's history of abuse, neglect, and

abandonment by her parents. The juvenile court included in its order of September 27, 2005 detailed findings of fact regarding the treatment of the applicant by her parents, thus the basis for the court's findings were established in the order. *Best Interest Order of the Juvenile Court* at 1-2.

The applicant was placed in a group home, Neighbor to Family, which serves children who were removed from the custody of their parents for reasons of abuse, abandonment, or neglect. *Letter from Neighbor to Family*, dated April 26, 2006.

The district director found that the record contains inconsistent indications of the applicant's birth date. Specifically, the district director noted that the juvenile court indicated in its first best interest order that the applicant was born on December 30, 1987, but that it issued an amended order reflecting that the applicant was born on July 7, 1988. The district director observed that the an arrest record indicated that the applicant's birth date was July 7, 1989, but that it was changed by an unknown individual to show that the applicant was born on July 6, 1988.

The district director noted that the applicant's birth certificate stated the applicant's birth date as July 7, 1988, yet that a presumed identity certificate issued by the general consulate of Mexico indicated that the applicant was unable to produce documents that confirmed she was a national of Mexico. Thus, the district director concluded that the general consulate of Mexico must have determined that the applicant's birth certificate is not evidence of her Mexican nationality, and thus it is not probative evidence in this proceeding. *Decision of the District Director* at 4, dated October 12, 2006.

The district director further found that the record contains inconsistent indications of the date that the applicant entered the United States. The district director noted that the applicant testified that she entered the United States without inspection on or about May 2004 at the age of 15. The district director observed that the predispositional report indicated that the Florida Department of Children and Families (FDCF) received a report on March 7, 2005 that the applicant had been transported to the United States three months prior to that date. The district director stated that she requested the applicant to provide evidence of her school attendance from the time of her entry to the United States, yet the applicant only provided a letter to show that she enrolled in English language classes. The district director found that the letter was not sufficient to show that the applicant had been in the United States since her 15<sup>th</sup> birthday.

The district director noted that the juvenile court's best interest order stated that the court reviewed supporting materials, but that the applicant only submitted the predispositional report. The district director found that the predispositional report was insufficient to show that the applicant was subject to abuse, neglect, or abandonment. The district director observed that the predispositional report stated that the applicant's parents could not be contacted, yet the best interest order noted that the applicant's mother made statements to the FDCF. The district director stated that "[i]t is contradictory that the predispositional report states that the mother could not be located and that the Best Interest Orders state that she made verbal contact with [F]DCF personnel." *Decision of the District Director* at 4.

Based on the finding that the applicant failed to establish her age, date of entry, and status as an abused, neglected, or abandoned child, the district director determined that the DHS will not consent to the applicant's best interest order serving as precondition to a grant of SIJ status.

On appeal, counsel contends that the district director exceeded her authority by disregarding the order of the juvenile court and making her own determination of whether the applicant has been abused, abandoned, or neglected by her parents. *Brief in Support of Appeal*, submitted January 16, 2007. Counsel asserts that the applicant has shown her true age and identity. *Id.* at 10. Counsel states that the district director's concerns regarding the applicant's exact date of entry, the applicant's school attendance, and whether the applicant's mother has made contact with the FDCF are irrelevant to the applicant's eligibility for SIJ status. *Id.* at 13-16.

Upon review, the applicant has established that the juvenile court's best interest order may serve as a precondition to the grant of special immigrant juvenile status. As noted above, section 101(a)(27)(J)(iii) of the Act provides that the Secretary of Homeland Security must expressly consent to the applicant's dependency order serving as a precondition to the grant of special immigrant juvenile status.

*Express consent* means that the Secretary, through the CIS District Director, has "determine[d] 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.]"

*Field Guidance on Special Immigrant Juvenile Status Petitions* ("Yates Memo"), William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, HQADN 70/23, dated May 27, 2004(quoted H.R. Rep. No. 105-405, at 130 (1997)).

Citizenship and Immigration Services (CIS) is not bound to accept the determination of a state juvenile court that an applicant is an abused, neglected or abandoned minor, or that it is not in his best interest to be returned to her country of nationality, without sufficient indication of the basis for the decision. While such an order is required to establish eligibility under section 101(a)(27)(J) of the Act, it does not relieve the applicant from the burden of satisfying CIS that the order was supported by relevant facts, and that it may serve as a basis for special immigrant juvenile status.

[E]xpress consent [to an order] should be given only if the adjudicator is aware of the facts that formed the basis for the juvenile court's rulings on dependency (or state custody), eligibility for long-term foster care based on abuse, neglect, or abandonment, and non-viability of family reunification, or the adjudicator determines that a reasonable basis in fact exists for these rulings.

*Yates Memo* at 4.

In the present matter, the record supports that the juvenile court's best interest order was supported by relevant facts. The order itself articulates sufficient findings of fact made by the juvenile court that served as the basis for its determination that the applicant is an abused, neglected, and abandoned child. Thus, the

juvenile court's order, by itself, establishes the facts that formed the basis for its rulings, such that DHS will give express consent to the order serving as a precondition to SIJ status.<sup>1</sup> *See Yates Memo* at 4.

The record reflects that the juvenile court reviewed a predispositional report from Neighbor to Families filed on the applicant's behalf. The juvenile court further indicated that it communicated with the applicant's mother. The district director stated that "[i]t is contradictory that the predispositional report states that the [applicant's] mother could not be located and that the Best Interest Orders state that she made verbal contact with [F]DCF personnel." *Decision of the District Director* at 4. However, the predispositional report is dated March 7, 2005, approximately six months prior to the juvenile court's first best interest order issued on September 27, 2005. Thus, it is plausible that contact was made with the applicant's mother during the six month period prior to the juvenile court's first order. Thus, the juvenile court's reference to contact with the applicant's mother is not inconsistent with the predispositional report.

The district director found that the record contains inconsistent indications of the applicant's birth date. However, the district director references no facts or documents in the record that significantly call into question the applicant's true date of birth, or undermine a finding that she is an abused, neglected, or abandoned minor. The juvenile court indicated in its first best interest order that the applicant was born on December 30, 1987, but it corrected the applicant's birth date in an amended order, reflecting that the applicant was born on July 7, 1988. In an order dated December 14, 2006, the juvenile court stated that the applicant's birth date was incorrect in its first best interest order due to a typographical error, and that the juvenile court "always understood [the applicant's] date of birth to be July 7, 1988." *Juvenile Court's Order*, dated December 14, 2006. Thus, the fact that the juvenile court's first best interest order presented the applicant's date of birth as December 30, 1987 does not call into question whether the applicant's date of birth is July 7, 1988.

The district director observed that the an arrest record indicated that the applicant's birth date was July 7, 1989, but that it was changed by an unknown individual to show that the applicant was born on July 6, 1988. The fact that the applicant's birth date was changed on the arrest record reflects that it was incorrectly entered on the first attempt. The AAO finds that the amended date of July 6, 1988, one day prior to the applicant's claimed date of birth, does not significantly call into question the applicant's true date of birth, particularly in light of the fact that the arrest record contained an error upon its initial creation.

The district director concluded that the general consulate of Mexico must have determined that the applicant's birth certificate is not evidence of her Mexican nationality, and thus it is not probative evidence in this proceeding. Yet, the presumed identity certificate issued by the general consulate of Mexico does not state what documents were submitted to show the applicant's Mexican nationality. Thus, it cannot be concluded that the general consulate had an opportunity to examine the applicant's birth certificate, or that the general consulate found the birth certificate to have no evidentiary value.

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<sup>1</sup> It is noted that all documentation in the record is consistent with the juvenile court's findings of fact, and the juvenile court was apprised of all material facts that relate to whether the applicant is an abused, neglected, and abandoned child.

It is noted that all other documents in the record consistently report the applicant's date of birth as July 7, 1988, including the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status; the applicant's Form I-693, Medical Examinations of Aliens Seeking Adjustment of Status; a letter from Neighbor to Family; the applicant's Form I-765, Application for Employment Authorization; the applicant's Form G-325A, Biographic Information, and; the present Form I-360 petition for SIJ status.

An applicant's true age and identity are material concerns regarding whether she is eligible for special immigrant juvenile status. However, in the present matter, the applicant has sufficiently established her identity and birth date of July 7, 1988.

The district director further found that the record contains inconsistent representations of the date that the applicant entered the United States. The applicant maintains that she entered the United States in May 2004 at age 15. It is noted that the applicant was age 15 in May 2004, thus the applicant's claim is plausible. The predispositional report indicated that the FDCF received information on March 7, 2005 that the applicant had been transported to the United States three months prior to that date, which suggests that the applicant entered in late November or early December 2004. However, the record does not reflect the source of the indication that the applicant entered three months prior to March 7, 2005. All other documentation in the record that notes that applicant's entry consistently states she entered in May 2004. Thus, the discrepancy between the predispositional report and the remaining documents in the record does not have a significant bearing on these proceedings, and does not undermine a finding that the applicant has been abused, neglected, or abandoned by her parents. It is noted that, in its order of December 14, 2006, the juvenile court stated that "the alleged discrepancy of a few months in [the applicant's] entry date to the United States does not alter [the juvenile court's] prior findings and orders." *Juvenile Court's Order* at 2, dated December 14, 2006.

The district director stated that she requested that the applicant provide evidence of her school attendance from the time of her entry to the United States, yet the applicant only provided a letter to show that she enrolled in English language classes. The district director found that the letter was not sufficient to show that the applicant had been in the United States since her 15<sup>th</sup> birthday. However, as discussed above, the record shows that the applicant entered the United States in the mid to later part of 2004, and the applicant's precise date of entry within that period does not have a material bearing on whether she has established eligibility for SIJ status. Regarding whether the applicant has submitted sufficient evidence of her school attendance in the United States, the district director has not articulated a line of inquiry that clearly relates the applicant's educational activities to the requirements for SIJ status as provided in sections 203(b)(4) and 101(a)(27)(J) of the Act and the regulation at 8 C.F.R. § 204.11(c). Thus, whether the applicant attended a full course of study or only English language classes is not material to whether she qualifies for SIJ status.

Based on the foregoing, the record establishes the basis for the juvenile court's order of September 27, 2005, such that the Secretary of Homeland Security is inclined to consent to the order serving as a precondition to the grant of special immigrant juvenile status. See section 101(a)(27)(J)(iii) of the Act. The AAO finds that the applicant meets the remaining requirements for SIJ status as provided in sections 203(b)(4) and 101(a)(27)(J) of the Act and regulation at 8 C.F.R. § 204.11(c). Accordingly, the district director's decision will be withdrawn and the petition will be approved.

In visa petition proceedings, the burden of proof is on the applicant 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 applicant has proven eligibility for the benefit sought.

**ORDER:** The appeal is sustained.