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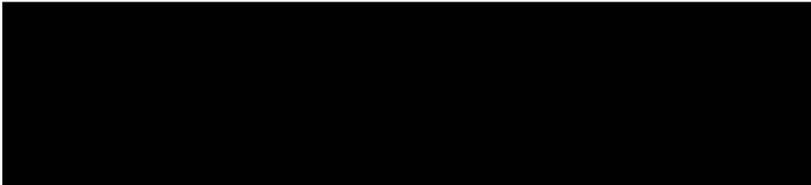
IN RE: Petitioner:



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, 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 seventeen-year-old native and citizen of Jamaica 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 November 13, 2006 denying the petition for special immigrant juvenile (SIJ) status. Specifically, the district director found that the applicant failed to show that he was abandoned, such that the Department of Homeland Security (DHS) should consent to his best interest order serving as a precondition to a grant of special immigrant juvenile 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 his parents. *Brief in Support of Appeal*, submitted February 9, 2007. Counsel contends that the present SIJ petition should be approved. *Id.*

The record contains a brief from counsel in support of the appeal; an Amicus Curiae brief from the Florida Guardian Ad Litem Program; orders from the juvenile court dated February 7, 2007 and August 9, 2005; a letter from [REDACTED] providing that it was authorized to be the legal guardian of the applicant; a dependency petition that was filed with the juvenile court on the applicant's behalf; a predisposition report from the Florida Department of Children and Families; documentation reflecting that the applicant was placed in his stepmother's home by the juvenile court; documentation regarding [REDACTED]'s oversight of the applicant's placement into his stepmother's care; the applicant's father's death certificate, and; a copy of the applicant's school identification badge. 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 October 20, 2000, the juvenile court issued an order finding that: the applicant's father was deceased and he was abandoned by his mother; the applicant has been the victim of abuse and neglect by his parents; 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 interest to be returned to Jamaica; the whereabouts of the applicant's mother are unknown and her parental rights have been terminated; it is in the best interests of the applicant to remain in the United States, and; the court will maintain jurisdiction pursuant to the regulation at 8 C.F.R. § 204.11(c)(5) to ensure that the applicant satisfies the requirements for SIJ status. *Best Interest Order of the Juvenile Court*, dated August 9, 2005. The record contains documentation that was under consideration by the juvenile court that describes the applicant's history of abuse, neglect, and abandonment by his parents. The juvenile court included in its order of August 9, 2005 detailed findings of fact regarding the treatment of the applicant by his parents, thus the basis for the court's findings were established in the order. *Best Interest Order of the Juvenile Court* at 1.

The juvenile court placed the applicant under the care of his stepmother. *Judicial Review Social Study Report*, dated May 8, 2006. The record reflects that the State of Florida maintained oversight over the applicant's placement with his stepmother. *Visitation Report Summary's from* [REDACTED] dated October 15, 2005, November 21, 2005, January 9, 2006, February 18, 2006, March 15, 2006, and April 10, 2006. The juvenile court issued a Judicial Review Social Study Report on May 5, 2006, in which it was indicated that the applicant "is available for adoption." *Judicial Review Social Study Report* at 9.

The district director noted that the applicant has a good relationship with his stepmother, and that he wishes for her to adopt him. The district director stated that the applicant's stepmother "has always been an appropriate caregiver and has always been willing to care for [the applicant] and provide [him] with shelter." *Decision of the District Director* at 4, dated November 13, 2006. The district director provided that the applicant's stepmother "continues to exercise her parental duties with [the applicant] and continues to adequately care for [the applicant]." *Id.* Based on these observations, the district director found that the applicant failed to show that he was abandoned, such that the Department of Homeland Security (DHS) should consent to his best interest order serving as a precondition to a grant of special immigrant juvenile status under section 101(a)(27)(J)(iii) of the Act.

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 his parents.

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 (quoting 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 his 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 CIS will give express consent to the order serving as a precondition to SIJ status.¹ *See Yates Memo* at 4.

The record contains further documentation to support the juvenile court's order, including a dependency petition that was filed with the juvenile court on the applicant's behalf, a predisposition report from the Florida Department of Children and Families, and the applicant's father's death certificate.

The district director referenced an unpublished decision of the AAO, and stated that "the [AAO] found that CIS should not consent to a juvenile court's order if the facts of the case are not persuasive in that the case is being pursued to offer protection to an individual who was abused, neglected, or abandoned." *Decision of the District Director* at 4. As noted above, an adjudicator must be "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 must determine that "a reasonable basis in fact exists for [the juvenile court's] rulings." *Yates Memo* at 4. As in the present matter, where a juvenile court's order clearly articulates the facts that serve as the basis of its findings, CIS is accordingly "aware of the facts that formed the basis for the juvenile court's rulings." *Id.* CIS is not charged with the task of making a *de novo* determination of whether an applicant is an abused, neglected, or abandoned child, and thus deference is given to state juvenile court's where their rulings are supported by relevant facts. *Id.*

The district director observed that the applicant was placed into the custody of his stepmother, and suggested that this fact calls into question whether the applicant "[c]ontinues to be dependent upon the juvenile court and eligible for long-term foster care," as required by the regulation at 8 C.F.R. § 204.11(c)(5). Yet, the juvenile court issued an order on February 7, 2007 in which it stated, in pertinent part:

3. This Court issued an order placing [the applicant] in [the applicant's stepmother's] care after having declared him dependent due to abuse, abandonment and neglect. The fact that this Child has been placed with [his stepmother] does not alter the findings previously made by this Court in its August 9, 2005 best interest order.

¹ 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.

4. [The applicant] continues to be a dependent child based on abandonment by his natural mother and father, neglect by his natural mother and father, and physical abuse by his father.

5. [The applicant] continues to be eligible for long term foster care as defined in the federal regulations in that family reunification is no longer a viable option. 8 C.F.R. § 204.11(a).

Juvenile Court's Order, dated February 7, 2007. Accordingly, the applicant remains dependent upon the juvenile court and eligible for long-term foster care, thus he satisfies the requirements of 8 C.F.R. § 204.11(c)(5).

It is noted that the district director made observations regarding whether the applicant's alleged stepmother was legally married to the applicant's father. However, whether the applicant's alleged stepmother is recognized as the applicant's legal stepmother is not relevant to whether the applicant is an abused, neglected, and abandoned child, or whether he otherwise meets the 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). Therefore, the district director's comments in this regard will be withdrawn.

Based on the foregoing, the record establishes the basis for the juvenile court's order of August 9, 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 not proven eligibility for the benefit sought.

ORDER: The appeal is sustained.