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06

[Redacted]

FILE:

[Redacted]

Office: BOSTON

Date: JAN 25 2008

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 IOI(a)(27)(J) of the Act, 8 U.S.C. § IOI(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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Boston, denied the special immigrant visa petition. The matter came before the Administrative Appeals Office (AAO) on appeal, and the appeal was dismissed. The applicant filed a Motion to Reopen the matter before the AAO. The motion will be granted, the appeal will be sustained and the petition approved.

The applicant is a 19-year-old native and citizen of El Salvador. She 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 found that the applicant failed to show that she continues to be dependent on a juvenile court and eligible for long-term foster care in the State of Massachusetts, as required by 8 C.F.R. § 204.11(c)(5). The petition was denied accordingly. The applicant filed a Form I-290B appeal with the AAO on August 20, 2007. On October 4, 2007, the AAO dismissed the appeal. Specifically, the AAO found that the applicant failed to show that she continues to be dependent on the Commonwealth of Massachusetts Trial Court, Probate and Family Court Department ("juvenile court"), or that she continues to be legally committed to, or placed under the custody of, an agency or department of a State and eligible for long-term foster care due to abuse, neglect, or abandonment. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(5). *Decision of the AAO*, at 7-9, 12, dated October 4, 2007. The applicant filed the present motion to reopen on November 5, 2007.

On motion, the applicant submits a copy of an order from the juvenile court in which the court confirms that it continues to have jurisdiction over the applicant, until she reaches twenty-one years of age. *Second Order of the Juvenile Court*, dated November 5, 2007. Counsel for the applicant contends that the juvenile court's order shows that the applicant remains dependent on the court, such that she is in compliance with section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(5).

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." The AAO finds the juvenile court's order of November 5, 2007 to constitute new evidence that warrants reopening the applicant's application for SIJ status. Thus, the applicant's motion to reopen will be granted, and the application will be reassessed in light of the new evidence.

Applicable Law

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 chapter

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

The regulation at 8 C.F.R. § 204.11(a) provides the following:

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of

majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in [a] guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Facts and Procedure

The record reflects that the applicant was born in El Salvador on February 2, 1988. The applicant suffered physical abuse from her father, sexual abuse from two of her brothers, rape by one of her cousins and school teachers, and verbal abuse from a friend of her mother. *Statement from the Applicant*, dated January 20, 2006; *Statement from the Applicant's Brother*, dated January 19, 2006. For her safety, the applicant traveled to the United States to join two of her brothers who are established in this country. *Id.* On September 14, 2005, the applicant was discovered attempting to enter the United States at the San Ysidro Port of Entry by hiding in the trunk of an automobile, and she was taken into DHS custody. On September 15, 2005, the applicant was issued a Notice to Appear based on the finding that she was in violation of sections 212(a)(4)(A) and 212(a)(7)(A)(i)(I) of the Act. The applicant was released to the custody of her brother on October 17, 2005.

On January 24, 2006, 22 days before the applicant's 18th birthday, the juvenile court issued an order finding that: the applicant was an unmarried ward under the laws of the State of Massachusetts; the applicant was dependent on the court relative to guardianship proceedings; the applicant's "custody continues under the jurisdiction of this Court"; reunification of the applicant and her parents was not possible, and thus the applicant was eligible for long-term foster care; it was not in the best interest of the applicant to be returned to El Salvador; it was in the best interest of the applicant to remain in the United States under the care of her brother, and; such findings were made because of abandonment, neglect, and/or abuse of the applicant. *Order of the Juvenile Court*, dated January 24, 2006. The applicant filed the present petition for SIJ status on February 1, 2006, 14 days prior to her 18th birthday.

The District Director found that the applicant failed to show that she continues to be dependent on a juvenile court and eligible for long-term foster care in the State of Massachusetts, as required by 8 C.F.R. § 204.11(c)(5). As noted above, the applicant filed a Form I-290B appeal with the AAO on August 20, 2007. On October 4, 2007, the AAO dismissed the appeal, finding that the applicant failed to show that she continues to be dependent on the juvenile court, or that she continues to be legally committed to, or placed under the custody of, an agency or department of a State and eligible for long-term foster care due to abuse, neglect, or abandonment. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(5). *Decision of the AAO* at 7-9, 12. The applicant filed the present motion to reopen on November 5, 2007.

Evidence on Motion

On motion, the applicant submits a copy of an order from the juvenile court in which the court confirms that it continues to have jurisdiction over the applicant, until she reaches twenty-one years of age. *Second Order of the Juvenile Court* at 1. The juvenile court stated the following, in pertinent part:

2. [The applicant] was declared dependent on the [juvenile court]. She remains under this Court's jurisdiction until she reaches the age of twenty-one.
3. This Court confirms that reunification with the [applicant's] parents remains no longer viable for [the applicant] and that she is deemed eligible for long-term foster care.
4. This Court confirms that it is not in [the applicant's] best interests to be returned to El Salvador, the country of her nationality,
5. This Court confirms that it remains is [sic] in [the applicant's] best interests to remain in the United States.
6. The above findings were made due to the neglect and abuse of [the applicant], based on the laws of the Commonwealth of Massachusetts.

Id. at 1-2.

Analysis

The primary issue in the present proceeding is whether the applicant has shown that she meets the requirements of section 101(a)(27)(J)(i) of the Act and the regulation at 8 C.F.R. § 204.11(c)(5).

In its prior decision, the AAO confirmed that, in order to establish that she is eligible for SIJ status, the applicant must show that she is an individual "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." Section 101(a)(27)(J)(i) of the Act. The AAO further confirmed that, in accord with congressional intent, as reflected in 8 C.F.R. § 204.11(c)(5), the applicant must show that the conditions described in section 101(a)(27)(J)(i) of the Act continue as of the time that the petition for SIJ status is adjudicated.

The record clearly shows that, on January 24, 2006, the applicant was deemed dependent on the juvenile court relative to guardianship proceedings and eligible for long-term foster care in the State of Massachusetts. *First Order of the Juvenile Court*, dated January 24, 2006. However, the applicant reached 18 years of age 22 days later on February 15, 2006. Counsel asserted that the juvenile court retained jurisdiction over the applicant beyond her 18th birthday, thus she remains dependent on the juvenile court and in compliance with 8 C.F.R. § 204.11(c)(5). Yet, the first court order, as well as the prior record, did not support a finding that the juvenile court maintained jurisdiction over the applicant beyond her eighteenth birthday, or that the juvenile court had legal authority to do so under Massachusetts law.

In its first order, the juvenile court indicated that the applicant's custody "continues under the jurisdiction of this Court," yet it did not provide a date on which such jurisdiction would end. As the applicant was age 17 at the time the court issued its order, the statement that the applicant's custody continues under the jurisdiction

of the court did not establish that the court intended to retain jurisdiction over the applicant past her eighteenth birthday, at such time that she would reach the age of majority under Massachusetts law. M.G.L.A. ch. 4 § 7 (defining "age of majority"); M.G.L.A. 231 § 85P (defining "age of majority"). Nor did the juvenile court cite any provision of Massachusetts law that would provide it with the authority to maintain jurisdiction over the applicant beyond her eighteenth birthday.¹ Moreover, Massachusetts law provides that a guardianship terminates by law when a child reaches age 18. *See* M.G.L.A. Chapter 201 § 4.

However, the second order of the juvenile court submitted on motion states that the juvenile court retains jurisdiction over the applicant until she reaches age twenty-one. As the applicant was born on February 2, 1988, she has not reached age twenty-one as of the time of this decision. Thus, the second order of the juvenile court supports that the applicant continues to be dependent on the juvenile court, as contemplated by section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(5).

It is noted that the second order of the juvenile court does not identify a provision of Massachusetts law under which it retains jurisdiction over the applicant. Yet, the AAO finds no Massachusetts law or court decisions that affirmatively state that the juvenile court may not retain jurisdiction over the applicant beyond her 18th birthday. Accordingly, the AAO concludes that the second order of the juvenile court is sufficient to show by a preponderance of the evidence that she continues to be dependent on the juvenile court, such that she meets the requirements of section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(5).

Conclusion

Based on the foregoing, the applicant has shown that she is dependent on the juvenile court, thus she satisfies the requirements of section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(5). The AAO finds that the applicant meets the remaining requirements for SIJ status.

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. 493 (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 shown eligibility for the benefit sought.

ORDER: . The motion is granted. The appeal is sustained and the petition approved.

¹ Juvenile court jurisdiction in the State of Massachusetts ends upon a child attaining the age of 18. *See* M.G.L.A. Chapter 119 § 24 (setting forth procedure to commit a child under the age of 18 to custody or other disposition). However, the AAO recognizes that some exceptions exist regarding criminal actions against a juvenile. *See* M.G.L.A. Chapter 119 § 72. Yet, as the present matter does not involve criminal proceedings against the applicant, the extension of juvenile court jurisdiction provided in M.G.L.A. Chapter 119 § 72 does not apply.