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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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MAY 06 2005

FILE: [redacted] Office: MIAMI, FL Date:

IN RE: Petitioner: [redacted]

PETITION: Petition for 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).

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

The petitioner is a 19-year-old native and citizen of Haiti. He seeks classification as a special immigrant juvenile pursuant to section 101(a)(27)(J) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(27)(J).

The district director determined that the petitioner had failed to establish that he was dependent upon the juvenile court and eligible for long-term foster care, as set forth in Title 8 of the Code of Federal Regulations (8 C.F.R.) section 204.11. The petition was denied accordingly.

Counsel asserts on appeal that the petitioner met the requirements for special immigrant juvenile status (SIJS) at the time that he filed his SIJS petition. Counsel asserts that a previous, long-standing Miami District Office interpretation of applicable statutes and regulations recognized a petitioner's eligibility for special immigrant juvenile status if the petitioner established his or her eligibility at the time of filing the SIJS petition. Counsel asserts that the district office's change in policy was made without providing notice to the petitioner or to counsel, and counsel indicates that in order to avoid seriously prejudicing the petitioner, the previous interpretation regarding SIJS eligibility should be applied.

Counsel provides no evidence on appeal to support the assertion that the Miami District Office previously followed a policy which accorded special immigrant juvenile status to a petitioner because he or she met statutory and regulatory requirements at the time SIJS petition was filed. However, a June 30, 2004 letter from counsel to the Miami District Office, adjudications officer handling the petitioner's file asserts that pursuant to 8 C.F.R. § 204.11 and U.S. Citizenship and Immigration Services (CIS) Inter Office Memorandum #3, Field Guidance on Special Immigrant Juvenile Status Petitions, signed by [redacted] of CIS on May 27, 2004 (SIJS policy memo), adjudications officers should grant SIJS petitions if the SIJS petition is filed with proof of the petitioner's age, a court order declaring the petitioner to be eligible for long-term foster care due to abuse, neglect or abandonment, and a determination by a family court judge that it is not in the petitioner's best interest to be returned to his native country or country of last habitual residency.

Counsel provided no information or evidence to support the assertion that the SIJS policy memo accords a petitioner special immigrant juvenile status based on the fact that the petitioner met statutory and regulatory requirements at the time SIJS petition was filed. Moreover, an independent AAO review of the May 27, 2004, SIJS policy memo reflects that the information contained in the SIJS policy memo does not support counsel's assertion. Accordingly, the AAO finds the petitioner has failed to establish that past or present CIS policy guidance allows for approval of a SIJS petition if it is established that that a petitioner met statutory and regulatory requirements at the time the SIJS petition was filed.

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 a "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

The regulatory provisions contained in 8 C.F.R. § 204.11(a) and (c), clarify, in pertinent part that:

a) [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.

(c) [A]n 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 record contains a June 30, 2003, Circuit Court of the 11th Judicial Circuit, Miami-Dade County, Florida, "Order Finding Eligibility for Special Immigrant Juvenile Status" in the petitioner's case. In addition, the record contains a Haitian birth certificate reflecting that the petitioner was born on July 7, 1985. He therefore turned eighteen-years-old on July 7, 2003.

Title V, Florida Statutes (Florida Statutes), Chapter 39.01 defines "child" as an unmarried person under the age of eighteen. Florida Statutes, Chapter 39.013 discusses a court's jurisdiction in juvenile dependency proceedings, and states, in part, "[w]hen the court obtains jurisdiction of any child who has

been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age."

The AAO finds that pursuant to Florida statutory provisions, the petitioner was no longer dependent upon the juvenile court and eligible for long-term foster care as of his eighteenth birthday on July 7, 2003. The petitioner therefore does not meet the requirement set forth in 8 C.F.R. § 204.11(c)(5), and he is ineligible for classification as a special immigrant juvenile, pursuant to section 101(a)(27)(J) of the Act.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in the present matter has not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.