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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: MIAMI Date: AUG 16 2006

IN RE: Petitioner: [redacted]
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:

[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.

Ellen C. Johnson

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 dismissed.

The beneficiary is a 19-year-old native and citizen of Haiti 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 denied the petition for SIJ status, finding that that applicant is no longer eligible for SIJ status due to the fact that he reached the age of majority. *Decision of the District Director*, dated October 11, 2004. The district director further noted that the evidence of record contains inconsistencies regarding the date the applicant entered the United States, and the date that the applicant last had contact with his father. *Id. at* 3-4.

On appeal, the applicant does not address whether he is no longer eligible for special immigrant juvenile (SIJ) status due to the fact that he has reached the age of majority. The applicant points out that he provided sworn statements on two occasions regarding his entry to the United States and the discrepancies in his asylum application, thus he suggests that all inconsistencies have been resolved. *Statement from Applicant on Form I-290B*, dated October 27, 2004.

The record contains a statement from the applicant on Form I-290B; a sworn statement from the applicant dated October 5, 2004; a brief from an attorney that was submitted to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Juvenile Family Division, (circuit court) on the applicant's behalf; a copy of the applicant's birth certificate; two orders issued by the circuit court, dated October 9, 2003; a copy of a death certificate for the applicant's mother, and; documentation regarding the applicant's prior Form I-589 application for asylum. 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;
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> (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 juvenile 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 reflects that the applicant was born on October 10, 1986. On October 9, 2003, the circuit court issued an order declaring that: the applicant is dependent on the court; the applicant is eligible for long-term foster care; it is not in the best interests of the applicant to return to Haiti, and; it is in the best interests of the applicant to remain in the United States.

Title V, Chapter 39 of the Florida Statutes states, in pertinent part:

39.01(12) "Child" or "youth" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

39.013(2) The circuit court shall have exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency . . . .

> When the court obtains jurisdiction of any child who had been found dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age.

Thus, under Florida State law, an individual can no longer be deemed dependent on the court once he or she reaches age eighteen. Therefore, as of October 10, 2004, the date that the applicant reached 18 years of age, the circuit court's order expired, and the applicant's dependency on the court ended.

As of October 11, 2004, the date of the director's decision, the applicant was no longer dependent upon a juvenile court. Therefore, the applicant failed to meet the requirement of the regulation at 8 C.F.R. § 204.11(c)(5), as provided above, and the petition may not be approved. The applicant doe not contest this fact on appeal.

Though not stated as a direct basis for denying the petition, the district director noted that the evidence of record contains inconsistencies regarding the date the applicant entered the United States, and the date that the applicant last had contact with his father. Specifically, the applicant indicated on his Form I-589 application for asylum that he entered the United States in December 2002, while on his Form I-360 petition for SIJ status he stated that he entered in September 2000. The district director stated that the discrepancy calls into question the veracity of the evidence that was presented to the circuit court that served as a basis for the dependency order. On appeal, the applicant points to two separate sworn statements he provided regarding the reason for the inconsistencies. The applicant asserts that his prior asylum application was completed by another individual, and that he did not read it or swear the accuracy of the contents. The applicant maintains that the true date of his entry was in September 2000.

Upon review, the applicant has not provided sufficient evidence to determine the true date of his entry to the United States. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant provided two brief statements that indicate that he entered the United States in December 2000. Yet, the applicant has not explained the details of his entry, such as how he was able to arrange travel to the United States, what events led to his departure from Haiti, and whether he traveled with others. The applicant has not identified anyone who is familiar with his travel to the United States, and he has not submitted statements from others that attest to his arrival in the United States. The applicant has not submitted evidence of his presence in the United States dating back to December 2000, such as mail addressed to him or other documentation. Thus, the applicant has not established the true date of his entry to the United States. While his entry date is not directly determinative of his eligibility for SIJ status, as noted by the district director, the veracity of the applicant's representations have a bearing on the reliability of the remaining evidence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Based on the foregoing, the applicant is no longer eligible for SIJ status, as he has reached the age of majority and is therefore no longer dependent upon a juvenile court.

In visa petition proceedings, the burden of proof is on the petitioner 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 petitioner has not proven eligibility for the benefit sought.

ORDER: The appeal is dismissed.