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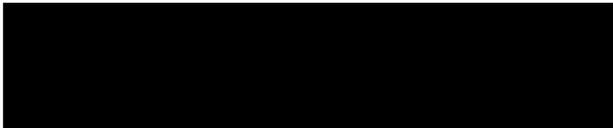
IN RE: Petitioner:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, 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 nineteen-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 denied the petition for SIJ status on August 21, 2006, finding that the applicant is no longer eligible for long-term foster care under Arizona law, as she reached 18 years of age. The district director determined that the applicant accordingly does not meet the regulation at 8 C.F.R. § 204.11(c)(5).

On appeal, counsel for the applicant asserts that the applicant continues to be eligible for SIJ status, as a court placed her under the guardianship of her aunt and uncle after reaching age 18. *Brief from Counsel*, dated September 14, 2006. Counsel contends that denying the present petition because the applicant reached age 18, while individuals in other states may be granted SIJ status beyond age 18, is a denial of the applicant's rights under the 5th and 14th Amendments of the U.S. Constitution. *Id.* at 4-6.

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

Arizona Revised Statutes § 1-215 states the following:

Definitions

In the statutes and laws of this state, unless the context otherwise requires:

19. "Majority" or "age of majority" as used in reference to age of persons means the age of eighteen years or more.

Arizona Revised Statutes § 8-201 states the following:

Definitions

In this title, unless the context otherwise requires:

3. "Adult" means a person who is eighteen years of age or older.

6. "Child", "youth" or "juvenile" means an individual who is under the age of eighteen years.

13. "Dependent child":

(a) Means a child who is adjudicated to be:

(i) In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.

(ii) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.

(iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.

(iv) Under the age of eight years and who is found to have committed an act that would result in adjudication as a delinquent juvenile or incorrigible child if committed by an older juvenile or child.

(v) Incompetent or not restorable to competency and who is alleged to have committed a serious offense as defined in section 13-604.

...

17. "Juvenile court" means the juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility.

Arizona Revised Statutes § 8-202 provides the following:

Jurisdiction of juvenile court

...

B. The juvenile court has exclusive original jurisdiction over all proceedings brought under the authority of this title except for delinquency proceedings.

...

G. Except as otherwise provided by law, jurisdiction of a child that is obtained by the juvenile court in a proceeding under this chapter or chapter 3, 5 or 10 of this title

shall be retained by it, for the purposes of implementing the orders made and filed in that proceeding, until the child becomes eighteen years of age, unless terminated by order of the court before the child's eighteenth birthday.

Arizona Revised Statutes § 14-5210 states the following:

Termination of appointment of guardian; general

A guardian's authority and responsibility terminates on the death, resignation or removal of the guardian or on the minor's death, adoption, marriage or attainment of majority. Termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for the ward's monies and assets. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.

Arizona Revised Statutes § 14-5108 provides the following:

Guardianship of foreign citizens

The court may appoint an adult as the guardian of a foreign citizen if all of the following are true:

1. The foreign citizen is under twenty-one years of age.
2. The foreign citizen has a temporary visa issued by the United States.
3. The adult agrees to sponsor the foreign citizen in obtaining permanent resident alien status in the United States.
4. The foreign citizen's parent, on behalf of the foreign citizen, filed a petition for permanent resident alien status with the United States government and that parent is now deceased.
5. The foreign citizen was under eighteen years of age at the time the petition for permanent resident alien status was filed.

The record reflects that the applicant's mother died on May 14, 2003, when the applicant was 15 years old. As the applicant's father was unknown, on February 16, 2005 the Superior Court of Arizona, Maricopa County, Juvenile Division ("juvenile court"), found the applicant to be a ward of the court. The juvenile court committed the applicant to the care, custody, and control of her aunt and uncle. On May 26, 2005, the applicant filed the present petition, approximately two weeks before her eighteenth birthday. The applicant reached 18 years of age on June 14, 2005. On September 11, 2006, the Superior Court of Arizona, Maricopa County ("superior court") declared the applicant "an adult foreign citizen requiring a guardianship pursuant to

Arizona Revised Statutes [sic] A.R.S. § 14-5108.” The superior court designated the applicant’s aunt and uncle as her co-guardians.

Upon review, the applicant was no longer eligible for SIJ status when she reached her eighteenth birthday. The juvenile court that issued her dependency order had exclusive jurisdiction to do so when she was a “child” under the age of eighteen years. A.R.S. § 8-201(6), 8-202(B). The juvenile court retained jurisdiction “until the [applicant became] eighteen years of age.” A.R.S. § 8-202(G).

Pursuant to Arizona Revised Statutes § 8-201(6), a “child” means an individual who is under the age of eighteen years. Accordingly, in order for an individual to qualify as a “dependent child” under Arizona Revised Statutes § 8-201(13), one must be under the age of 18. The juvenile court designated the applicant as a dependent child when she was 17 years old. *Dependency Order of the Juvenile Court*, dated February 16, 2005. However, when she reached 18 years of age, she no longer qualified as a dependent child under Arizona law, and jurisdiction [passed from the juvenile court. A.R.S. § 8-201(13), 8-202(G).

On September 11, 2006 when the applicant was 19 years old, the superior court issued a subsequent order appointing the applicant’s aunt and uncle as her co-guardians pursuant to Arizona Revised Statutes § 14-5108. Yet, the order designated the applicant as an adult, reflecting that she was no longer under the jurisdiction of the juvenile court. *Guardianship Appointment from the Superior Court*, dated September 11, 2006; *See* A.R.S. § 8-202(G). As the juvenile court’s order expired on June 14, 2005 when the applicant turned 18, the superior court’s order of September 11, 2006, issued over one year later, does not represent a maintenance of jurisdiction by the juvenile court, or a connection to the juvenile court’s findings of dependency. The superior court’s order was an independent order pursuant to the applicant’s circumstances as a foreign adult under Arizona Revised Statutes § 14-5108. It is noted that Arizona Revised Statutes § 14-5108 does not require that the individual in question be dependent on the court. Thus, the superior court’s order does not meet the requirements of the regulations at 8 C.F.R. § 204.11(c)(3) or (5).

Based on the foregoing, on June 14, 2005 when the applicant turned 18, she ceased “to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility . . . having been vacated, terminated, or otherwise ended.” 8 C.F.R. § 204.11(c)(5). For this reason, the petition may not be approved.

Counsel references the regulation at 8 C.F.R. § 204.11(c)(1) and asserts that “the Government has removed the requirement that the beneficiary be a juvenile under state law and replaced it with the requirement that the beneficiary be under twenty-one years of age.” *Brief from Counsel* at 5. As quoted above, the regulation at 8 C.F.R. § 204.11(c)(1) requires an individual to be “under twenty-one years of age” in order to qualify for SIJ status. However, the regulation at 8 C.F.R. § 204.11(c)(1) merely sets a maximum age at which an individual may be deemed a special immigrant juvenile. The regulation at 8 C.F.R. § 204.11(c)(3) explicitly states that an individual must “[have] been declared dependent upon a juvenile court located in the United States in accordance with *state law* governing such declarations of dependency” 8 C.F.R. § 204.11(c)(3)(emphasis added). The regulation at 8 C.F.R. § 204.11(c)(5) further requires that an individual “[c]ontinues to be dependent upon the juvenile court and eligible for long-term foster care” Thus, an applicant must show that she is dependent upon a juvenile court and eligible for long-term foster care under the laws of the state that has jurisdiction over her. State laws regarding dependency and foster care differ. As

in Arizona, state law may effectively limit eligibility for SIJ status to those under age 18 due to statutes applicable to dependency and foster care, despite the federally mandated maximum age of 20 for SIJ status under the regulation at 8 C.F.R. § 204.11(c)(1). As discussed above, in light of the laws of Arizona, the applicant was no longer dependent on the juvenile court and eligible for SIJ status once she reached her eighteenth birthday.

Counsel asserts that the denial of the present petition is a denial of the applicant's due process rights under the 5th Amendment of the U.S. Constitution. *Brief from Counsel* at 6. However, the Act provides a process through which an applicant may apply for SIJ status. The applicant availed herself of that process, including the opportunity to respond to a Notice of Intent to Deny prior to denial of her petition, and the right to appeal the adverse decision of the district director to the AAO. The fact that the applicant failed to meet her burden within that process does not reflect that she was denied due process.

Counsel asserts that the denial of the present petition is a denial of the applicant's equal protection rights under the 14th Amendment of the U.S. Constitution. *Brief from Counsel* at 4-6. As observed by counsel, the 14th Amendment provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In essence, the 14th Amendment requires a state to treat individuals within its jurisdiction equally. The applicant has not shown that she has been treated differently than other individuals in the State of Arizona. The fact that the laws of Arizona regarding juveniles differ from those of other states does not constitute a violation of the 14th Amendment. Counsel's assertions regarding violations of the applicant's constitutional rights are not persuasive.

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.