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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:

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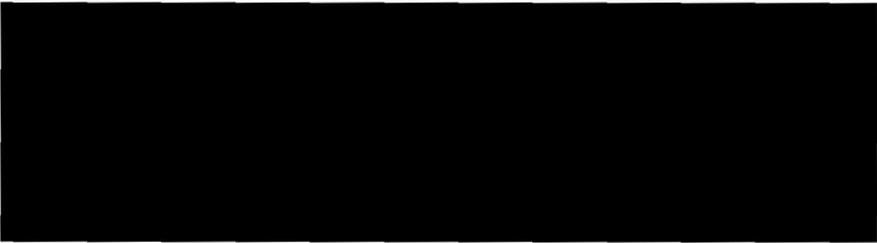
Date: NOV 24 2008

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,  
3 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.

John F. Grissom, Acting 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. The appeal was dismissed. The matter is now before the AAO on Motion to Reopen. The motion will be granted, the matter will be reopened, the previous decisions will be withdrawn, and the petition will be approved.

The applicant is a 20-year-old native and citizen of Guatemala. He 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 he 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 appealed the District Director's denial to the AAO. Upon review, the AAO found that the applicant did not show that he is dependent on a juvenile court, or that he is legally committed to, or under the custody of, an agency or department of the State of Massachusetts.<sup>1</sup> Section 101(a)(27)(J)(i) of the Act. Accordingly, the AAO dismissed the appeal.

On motion to reopen, counsel for the applicant asserts that a new order from the Commonwealth of Massachusetts Trial Court, Probate and Family Court Department, Middlesex Division ("juvenile court") clearly shows that the applicant continues to be dependent on the juvenile court, until his 21<sup>st</sup> birthday. *Motion Brief from Counsel*, dated December 20, 2007. Counsel maintains that the decisions of the District Director and the AAO were incorrect based on the prior record of proceeding, but that the new court order unequivocally shows that the applicant is eligible for SIJ status. *Id.* at 4.

The record contains, in pertinent part, a copy of a new order from the juvenile court, dated December 19, 2007; a copy of an order from the juvenile court, dated June 23, 2006; briefs from counsel; a copy of a motion filed before the juvenile court; an affidavit from an attorney attesting to his prior success with filing SIJ petitions with the USCIS Boston District Office for applicants who reached 18 years of age; documents relating to the placement of the applicant under the care of a guardian, including statements from the applicant's parents assenting to the termination of their parental rights and the assignment of a guardian; an affidavit from the individual assigned as the applicant's guardian; a statement from the applicant; a copy of a birth record for the applicant; documentation relating to the applicant's proceedings in Immigration Court, and; documentation in connection with the applicant's apprehension upon entry to the United States. The entire record was considered in rendering a decision on the current motion.

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<sup>1</sup> The AAO further found that the applicant did not establish that the AAO has the authority to apply the doctrine of equitable estoppel in the present matter, or that if such authority existed, it would be warranted based on the current facts. Counsel states that the applicant expressly reserves the right to raise this argument in further proceedings, yet it is not at issue on motion.

### Applicable Law

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."

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.

### **Motion**

Upon review, the applicant has met the requirements of a motion to reopen, as he has presented new evidence that was not available in the prior proceeding. Specifically, the applicant provides a new order from the juvenile court that was not available at the time of filing the Form I-360 petition or the subsequent appeal before the AAO. Thus, the applicant has presented new facts that are supported by documentary evidence, and the motion to reopen will be granted and the petition will be reevaluated in light of the new evidence. 8 C.F.R. § 103.5(a)(2).

### **Facts and Procedure**

The record reflects that the applicant was born in Guatemala on August 14, 1988. The applicant resided in extreme poverty with his father, mother, and five siblings. *Statement from the Applicant*, dated May 30, 2006. The applicant left school after sixth grade in order to help his father with odd jobs and to search for food and water. *Id.* at 1. In August 2005, the applicant left his family and traveled to the United States. *Id.* The applicant entered the United States without inspection, and he was apprehended by U.S. Border Patrol agents on or about August 25, 2005. *Form I-213, Record of Deportable/Inadmissible Alien*,

dated August 24, 2005.<sup>2</sup> The applicant was released to the custody of his sister-in-law on or about October 3, 2005.

On June 23, 2006, 52 days before the applicant's 18<sup>th</sup> 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 within the meaning of the Act, 8 U.S.C. § 1101(a)(27)(J)(i) and 8 C.F.R. § 204.11(a), (c); the applicant would be placed under the permanent guardianship of his sister-in-law; the applicant was eligible for, and continued to be eligible for, long-term foster care due to abuse, abandonment, or neglect within the meaning of the Act, 8 U.S.C. § 1101(a)(27)(J)(i) and 8 C.F.R. § 204.11(a), (d)(2)(i); reunification of the applicant and his parents was not possible; it was not in the best interest of the applicant to be returned to Guatemala, and; it was in the best interest of the applicant to remain in the United States. *Order of the Juvenile Court*, dated June 23, 2006. The applicant filed the present petition for SIJ status on August 3, 2006, 11 days prior to his 18<sup>th</sup> birthday. On August 14, 2006, the applicant reached 18 years of age.

On August 1, 1997, the District Director denied the petition, finding that the applicant failed to show that he 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 applicant appealed the District Director's denial to the AAO. Upon review, the AAO found that the applicant did not show that he is dependent on a juvenile court, or that he is legally committed to, or under the custody of, an agency or department of the State of Massachusetts. Section 101(a)(27)(J)(i) of the Act.

The AAO observed that, on June 23, 2006, the applicant was deemed dependent on the juvenile court and eligible for long-term foster care in the State of Massachusetts. *Order of the Juvenile Court*, dated June 23, 2006. However, the AAO noted that the applicant reached 18 years of age 21 days later on August 14, 2006. The AAO explained that neither the court order nor the appellate record supported a finding that the juvenile court maintained jurisdiction over the applicant beyond his eighteenth birthday.

In its order, the juvenile court did not provide a termination date for the order, or address whether it intended for its jurisdiction to extend beyond the applicant's eighteenth birthday. The juvenile court cited M.G.L. ch. 201 §§ 1, 2 to support that it has jurisdiction over "juveniles," yet it did not cite a provision of law that supports that it may retain jurisdiction over an individual beyond his eighteenth birthday.<sup>3</sup> *Order*

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<sup>2</sup> The Form I-213, Record of Deportable/Inadmissible Alien, documenting the applicant's apprehension is dated August 24, 2005, yet it reports that the applicant was apprehended on August 25, 2005. It is unclear why the document references an event that occurred one day after the purported execution of the form. However, the dates of the applicant's entry and apprehension have been generally established and are not at issue in the present proceeding.

<sup>3</sup> Juvenile court jurisdiction in the State of Massachusetts ends upon a child attaining the age of 18. *See* M.G.L. ch. 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. ch. 119 §

*of the Juvenile Court* at 1. The AAO stated that, as the applicant was age 17 at the time the court issued its order, the juvenile court's exercise of jurisdiction does not establish that the court intended to retain jurisdiction over the applicant past his eighteenth birthday, at such time that he would reach the age of majority under Massachusetts law. M.G.L. ch. 4 § 7 (defining "age of majority"); M.G.L. ch. 231 § 85P (defining "age of majority"). The AAO observed that Massachusetts law provides that a guardianship terminates when a child reaches age 18, thus the juvenile court's order of the applicant's sister-in-law as his guardian expired by operation of law on the applicant's eighteenth birthday. *See* M.G.L. ch. 201 § 4.

As noted above, the AAO further found that, as an alternative to showing continued dependency on the juvenile court, the applicant failed to show that a court has legally committed him to, or placed him under the custody of, an agency or department the State of Massachusetts. Section 101(a)(27)(J)(i) of the Act.

### **Counsel's Assertions on Motion**

On motion, the applicant submits a new order from the juvenile court, dated December 19, 2007, after the AAO issued its decision on November 21, 2007. The new order states that "[the applicant] remains under the jurisdiction of [the] Court until he reaches the age of 21." *New Order of the Juvenile Court*, dated December 19, 2007. The order further provides that "[the applicant] continues to be dependent on [the] Court and eligible for long-term foster care, as those terms are used in 8 C.F.R § 204.11(c), and so remains until he reaches the age of 21." *Id.* at 1. The juvenile court reaffirmed the findings in its prior order of June 23, 2006. *Id.* at 1-2.

Counsel asserts that the new order from the juvenile court shows that the applicant continues to be dependent on the juvenile court, until his 21<sup>st</sup> birthday. *Motion Brief from Counsel* at 3-4. Counsel maintains that the decisions of the District Director and the AAO were incorrect based on the prior record of proceeding, but that the new court order unequivocally shows that the applicant is eligible for SIJ status. *Id.* at 4.

### **Analysis**

Upon review, the AAO finds that the new order from the juvenile court is sufficient to show by a preponderance of the evidence that the applicant remains under the jurisdiction of the juvenile court, such that he is dependent on the juvenile court. *See* section 101(a)(27)(J)(i) of the Act. As noted above, the new order from the juvenile court explicitly states that the applicant remains under its jurisdiction until he reaches his 21<sup>st</sup> birthday. *New Order of the Juvenile Court* at 1. As of the date of this decision, the applicant has not reached his 21<sup>st</sup> birthday. Accordingly, he continues to be dependent on the juvenile court and he has established that he meets the requirements of section 101(a)(27)(J)(i) of the Act.

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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. ch. 119 § 72 does not apply.

Counsel maintains that the decision of the AAO was incorrect based on the prior record of proceeding, but that the new court order unequivocally shows that the applicant is eligible for SIJ status. *Motion Brief from Counsel* at 4. The AAO agrees that the new court order clearly shows that the applicant remains under its jurisdiction. Yet, counsel has not established that the AAO's prior analysis was incorrect based on the record at the time of appeal. As the new evidence on motion shows that the applicant meets section 101(a)(27)(J)(i) of the Act, no purpose is served in revisiting the AAO's prior analysis.

### **Conclusion**

Whether or not the applicant meets the requirements of section 101(a)(27)(J)(i) of the Act was the only basis for the AAO's prior finding the applicant was ineligible for SIJ status. As the applicant has now shown that he meets section 101(a)(27)(J)(i) of the Act, he has established that he is eligible 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 now shown eligibility for the benefit sought. Accordingly, the prior decisions of the district director and the AAO are withdrawn.

**ORDER:** The motion to reopen is granted. The petition is approved.