

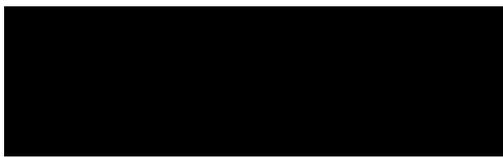
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [Redacted] Office: MIAMI DISTRICT OFFICE Date: MAR 04 2005

IN RE: Petitioner: [Redacted]
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 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 Miami, Florida District Director denied the preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the 18-year old beneficiary as a special immigrant juvenile 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, finding that the beneficiary is no longer dependent upon the juvenile court and no longer eligible for long-term care, hence, is ineligible for this visa classification.

On appeal, counsel for the petitioner asserts that since the beneficiary was under 18 years of age when the instant petition was filed and the petition was approvable as filed, the district director should have approved the petition. Counsel further states that the juvenile court retained jurisdiction over the beneficiary to monitor the progress of the petitioner and therefore the beneficiary was still dependent on the juvenile court.

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 longterm 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 servicing 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; or
- (7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

The record reflects that the beneficiary entered the United States as a B-2 nonimmigrant visitor on March 10, 1994. The beneficiary previously sought to adjust to permanent resident status based upon his father's marriage to [REDACTED]. On July 30, 2001, the beneficiary's application for adjustment of status was denied because his father had ceased to reside with his spouse. The beneficiary was placed in removal proceedings on May 20, 2002. On March 19, 2004, [REDACTED] the petitioner's sister, filed a Form I-360 petition seeking classification of the beneficiary as a special immigrant juvenile.

In support of the petition, counsel submits court records indicating that the petitioner was granted temporary legal custody of the beneficiary on February 12, 2004, by the Circuit Court for Miami-Dade County, Florida. In a separate order, the same court determined that the beneficiary would be eligible for long-term foster care due to abandonment and that it would not be in the best interest of the beneficiary to be returned to the country of his nationality.

The district director determined that when the beneficiary reached 18 years of age on April 18, 2004, he ceased to be dependent upon the juvenile court; hence, he was no longer eligible for long-term foster care or the visa classification sought. The district judge cited Title V, Chapter 39 of the Florida Statutes, in 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 has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age.

Counsel for the petitioner asserts that the court retained jurisdiction over the beneficiary because it explicitly reserved "jurisdiction to exercise oversight over counsel's handling of the application for Special Immigrant Juvenile Status."

In review, the juvenile court's jurisdiction over the beneficiary ceased when he reached the age of 18. Further, the beneficiary ceased to be dependent upon the juvenile court and eligible for long-term foster care when he reached the age of 18.

The petitioner has failed to establish that the beneficiary qualifies as a special immigrant juvenile pursuant to sections 203(b)(4) and 101(a)(27)(J) of the Act.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.