



U.S. Citizenship
and Immigration
Services

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FILE:



Office: MIAMI

Date: MAR 30 2007

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, Miami, (district director) 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 twenty-three-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 issued a decision on October 20, 2004, denying the petition for special immigrant juvenile (SIJ) status. The district director found that the applicant failed to show that she continues to be eligible for long-term foster care in the State of Florida, as required by the regulation at 8 C.F.R. § 204.11(c)(5).

On appeal, counsel for the applicant asserts that the applicant aged out of eligibility for SIJ status due to the district director's lengthy delay in adjudicating the application. *Statement from Counsel on Form I-290B*, dated November 9, 2004. Counsel raises concerns regarding the perceived lack of oversight of U.S. Citizenship and Immigration Services (CIS), particularly regarding the occurrence of delayed adjudications. *Id.* Counsel contends that the applicant need not show that she continues to be eligible for long-term foster care and dependent on the juvenile court that issued her dependency order, as section 101(a)(27)(J)(i) of the Act merely requires that the applicant "has been" deemed dependent on the court and eligible for long-term foster care by the juvenile court. *Id.* Counsel asserts that, as the applicant was deemed dependent on a juvenile court and eligible for long-term foster care, she is eligible for SIJ status. *Id.* Counsel contends that, in light of practices of statutory interpretation, the regulation at 8 C.F.R. § 204.11(c)(5) is incongruent with section 101(a)(27)(J)(i) of the Act, and thus the AAO should elect to not require the applicant to meet the requirements of 8 C.F.R. § 204.11(c)(5) that she continue to be dependent on the juvenile court and eligible for long-term foster care. *Id.*

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;
- (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 . . .

The record reflects that the applicant was born on November 8, 1983. She entered the United States in or about November 2000 without inspection. On October 17, 2001, the Circuit Court of the Eleventh Judicial Circuit In and For Miami-Dade County, Florida, Juvenile Division ("juvenile court") issued two orders finding that: 1) the applicant had not had any contact or support from her mother for 13 years; 2) the applicant had not had any contact from her father since she was born; 3) the applicant was dependent on the court due to such abandonment; 4) the applicant was eligible for long-term foster care; 5) it was not possible to reunify the applicant with her parents; 6) it was not in the best interests of the applicant to return to Haiti, and; 7) it was in the best interests of the applicant to remain in the United States. *Orders from the Juvenile Court*, dated October 17, 2001. On July 23, 2003, the applicant filed the present Form I-360 petition for SIJ status, when she was 19-years-old.

The district director's decision was based on the fact that the applicant was no longer eligible for long-term foster care under Florida law, having reached her eighteenth birthday on November 8, 2001 (approximately

one year and eight months prior to the date that the SIJ petition was filed). *See Decision of the District Director*, dated October 20, 2004. The Florida statutes contained at Title V, Chapter 39, referenced by the district director provide the following:

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.

The district director found that, because the applicant had reached the age of majority under Florida law, she had aged out of the jurisdiction of the juvenile court, and no longer "[c]ontinue[d] to be dependent upon the juvenile court and eligible for long-term foster care," as required by 8 C.F.R. § 204.11(c)(5). 8 C.F.R. § 204.11(c)(5); *Decision of the District Director* at 3. Consequently, the applicant was no longer eligible for special immigrant status. *Id.*

On appeal, counsel contends that the applicant need not show that she continues to be eligible for long-term foster care and dependent on the juvenile court that issued her dependency order. However, the regulation at 8 C.F.R. § 204.11(c)(5) clearly requires an applicant to show that she "[c]ontinues 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." 8 C.F.R. § 204.11(c)(5).

Counsel asserts that 8 C.F.R. § 204.11(c)(5) conflicts with section 101(a)(27)(J)(i) of the Act, and thus 8 C.F.R. § 204.11(c)(5) must be "nullified" by the AAO. *Statement from Counsel on Addendum to Form I-290B*. However, the AAO does not find that 8 C.F.R. § 204.11(c)(5) is in opposition to section 101(a)(27)(J)(i) of the Act. As observed by counsel, section 101(a)(27)(J)(i) of the Act requires that an applicant show that she "has been declared dependent on a juvenile court located in the United States . . . and . . . has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment." Section 101(a)(27)(J)(i) of the Act. As noted above, the regulation at 8 C.F.R. § 204.11(c)(5) requires an applicant to show that she "[c]ontinues 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." 8 C.F.R. § 204.11(c)(5). Thus, section 101(a)(27)(J)(i) of the Act requires that a set of conditions occurred at some point in the past, and 8 C.F.R. § 204.11(c)(5) requires that such conditions continue to the present time. Rather than impose requirements that conflict with section 101(a)(27)(J)(i) of the Act, the regulation at 8 C.F.R. § 204.11(c)(5) defines additional requirements, as is common with regulations that implement provisions of the Act. The applicant must meet the requirements of 8 C.F.R. § 204.11(c)(5).

Upon review, the AAO finds that the district director's analysis was correct. Under Florida law at the time of the juvenile court's order and the district director's decision, the applicant was no longer dependent on the

juvenile court.¹ Specifically, Florida Statutes § 39.013(2) indicated that the juvenile court no longer had jurisdiction over the applicant as of her eighteenth birthday. Florida Statutes § 39.013(2). Thus, the applicant was no longer dependent on the juvenile court as of November 8, 2001, the date she reached eighteen years of age. As of November 8, 2001, the applicant no longer met the requirements of 8 C.F.R. § 204.11(c)(5), and she was no longer eligible for SIJ status. For this reason, the petition may not be approved.

Counsel asserts that the applicant aged out of eligibility for SIJ status due to the district director's lengthy delay in adjudicating the application. *Statement from Counsel on Form I-290B*, dated November 9, 2004. However, the applicant was 19-years-old on the date she filed her Form I-360 petition for SIJ status. Thus, as noted above, she was no longer "dependent upon the juvenile court," as required by 8 C.F.R. § 204.11(c)(5). *See* Florida Statutes § 39.013(2). Accordingly, the applicant had already aged out of eligibility for SIJ status as of the date she filed the present petition, and any delay by the district director did not cause her to lose eligibility.

It is further noted that the applicant is now age 23. Pursuant to 8 C.F.R. § 204.11(c)(1), in order to qualify for SIJ status, an applicant must be under 21 years of age. 8 C.F.R. § 204.11(c)(1). The applicant does not meet the age limit imposed by 8 C.F.R. § 204.11(c)(1).

Based on the foregoing, the AAO finds that the district director did not err in concluding that the applicant was no longer eligible for SIJ status. Furthermore, it is noted that the applicant has not established that delay from the district director impacted her eligibility 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. 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 applicant has not proven eligibility for the benefit sought.

ORDER: The appeal is dismissed.

¹ It is noted that, after the dates of the juvenile court's order and the district director's decision, Florida Statute section 39.013(2) was revised to allow a juvenile court to retain jurisdiction over an applicant for SIJ status until her twenty-second birthday. However, as the revised Florida Statute section 39.013(2) was not in effect at the time of the district director's decision, his analysis regarding the juvenile court's jurisdiction was correct. Additionally, the juvenile court no longer had jurisdiction over the applicant as of her eighteenth birthday, November 8, 2001. As revised Florida Statute section 39.013(2) came into effect after the juvenile court lost jurisdiction over the applicant, the juvenile court could not have "retain[ed] jurisdiction" over the applicant's case once Florida Statute section 39.013(2) came into effect. Florida Statute section 39.013(2).