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U.S. Citizenship
and Immigration
Services

LI

[Redacted]

FILE:

Office: MIAMI

Date: **AUG 03 2006**

IN RE: Petitioner:
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 District Director, Miami denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the decision of the district director and remand the case to the director for further action.

The petitioner is a 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 on June 14, 2006 after finding that affidavits submitted by the petitioner were not credible and therefore U.S. Citizenship and Immigration Services (USCIS) was unable to consent to the juvenile court's order regarding her eligibility for SIJ status.

On appeal, counsel for the petitioner states that the petitioner is eligible for SIJ status because the court found her to have been abandoned, neglected and abused by her biological parents.

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

In his decision the director found the petitioner's claim to have been abandoned by her biological parents not credible for three reasons:

- 1) Department records indicate that her biological mother used the petitioner's current address on several visits to the United States;
- 2) In the Predispositional Study submitted to the family court it was stated that Ms. [REDACTED] the woman the petitioner has been living with, was a family friend, however law enforcement databases indicate that [REDACTED] is also known as [REDACTED] and [REDACTED]
- 3) The databases also indicate that Jean Bastien, the applicant's father, is living at the address where the petitioner is currently residing.

On appeal, counsel submits an Amended Adjudicatory Order by the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County Florida, Juvenile Division, dated August 2, 2006. The amended adjudicatory order found that having heard testimony from the minor child and witnesses it was given that the petitioner had not had any contact with either her mother or her father since 1999. In response to the director's findings, the court found that:

- 1) The petitioner's mother had never stayed at or visited the petitioner's prior or current residence and the petitioner was unaware that her mother had visited the United States since 1999.
- 2) The petitioner has a brother with the same name as the father who resides at the same address as the petitioner and the petitioner's father has never lived with the petitioner since 1999.
- 3) [REDACTED] is the petitioner's paternal aunt and the sister of the petitioner's father, [REDACTED]. She has not had any contact with either of the petitioner's parents since 1999.

The AAO has reviewed the entire record and finds that there are significant contradictions in the information presented by the petitioner and information contained in various Immigration and law enforcement databases. While, in general, USCIS should not second-guess the court's ruling or question whether a court order was properly issued, the AAO finds that the contradictions contained in the record compel the USCIS to question whether the court was apprised of all the facts relating to the petitioner's parents prior to its August 2, 2006 decision.

Specifically, the record contains Department of Homeland Security non-immigrant arrival information indicating that the petitioner's mother [REDACTED], has arrived in the United States on at least five occasions: September 19, 1999, November 21, 2001, April 1, 2002, August 9, 2002 and October 12, 2005. On her

arrival card information for the first three arrivals she listed [REDACTED] as her intended address in the United States during her stay. This is the same address the petitioner listed as her intended address on her July 4, 1999 arrival. It is also the previous address for [REDACTED] with whom the petitioner has been living since her arrival.

In addition, information obtained from public records and printed out on June 13, 2006, indicate that the applicant's father, [REDACTED] is currently living at [REDACTED] Street, Miami Fl. He has had a Florida Driver's License since 1991 and the records indicate no other address. The records indicate that [REDACTED] previously lived at that address, and the petitioner's G-325 Biographic Information Form indicates that she lived at that address until June 2004.¹

The AAO finds that these contradictions seriously undermine the petitioner's claim that she has not seen her parents since they disappeared when she was a small child. As noted by counsel on appeal, neither the petitioner nor counsel has been afforded the opportunity to view the adverse information used by the director in his decision in order to provide an explanation for the contradictions. The AAO will therefore remand the record to the director who will allow counsel the opportunity to review all materials in the file and provide explanations for the discrepancies.

ORDER: The record is remanded for action as noted above and entry of a new decision.

¹ The AAO notes that the records also indicate a [REDACTED], no date of birth listed, currently lives at the same address as the petitioner. As noted by the judge's order, this could be the petitioner's brother.