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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: ATLANTA

Date: APR 19 2007

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:

PUBLIC COPY

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, Atlanta, denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 21-year-old native and citizen of Ethiopia. She 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 has been adopted by her brother, and thus she is no longer dependent upon a juvenile court, as required by 8 C.F.R. § 204.11(c)(5). The petition was denied accordingly.

On appeal, on Form I-290B counsel for the applicant states the following:

- a. Statute provides for adoption when outside of juvenile court jurisdiction
- b. Court orders clearly show juvenile court had active court proceedings after hearing date.
- c. Statute vague
- d. Equal [P]rotection [C]ause of the U.S. Constitution
- e. Clear congressional intent to adjudicate until age 21.

Statement from Counsel on Form I-290B, dated February 23, 2005. Thus, counsel suggests that the petition should be approved.

The record contains a statement from counsel on Form I-290B; a brief from counsel; affidavits from the applicant and the applicant's siblings; a copy of the applicant's birth certificate; a copy of an order from the Juvenile Court of Dekalb County, State of Georgia (juvenile court) dated August 19, 2003; a copy of an adoption decree for the applicant, and; a copy of an order from the juvenile court titled "Order Concluding Case," dated January 18, 2005. 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 in Ethiopia on December 28, 1985. After her parents were taken from her home and disappeared, she came to reside in the United States with her siblings in June 2001. On August 13, 2001, the juvenile court issued an order finding that: the applicant's parents were deceased or abandoned her; the applicant would be placed into the care of her sister; the applicant was eligible for long-term foster care; it was not in the best interests of the applicant to return to Ethiopia, and; it was in the applicant's best interest to be placed into the care of her sister in Georgia until she reached the age of majority. *Order of the Juvenile Court*, dated August 13, 2001. On October 29, 2004, the applicant's brother adopted her in Atlanta, Georgia. *Final Decree and Order of Adoption*, dated October 29, 2004. On January 18, 2005, the juvenile court issued an order titled "Order Concluding Case," finding that the applicant had

reached her eighteenth birthday, and thus she was “no longer in need of the supervision of [the juvenile] court” and proceedings before the juvenile court concluded. *Juvenile Court’s Order Concluding Case*, dated January 18, 2005.

Upon review, the applicant does not meet the requirement of 8 C.F.R. § 204.11(c)(5), as proceedings before the juvenile court concluded and she is no longer deemed dependent on the juvenile court. *Id.* at 1-2. The applicant has provided no explanation or evidence to show that the juvenile court reinitiated proceedings after it terminated her dependency on January 18, 2005. As the applicant has not shown that she “[c]ontinues to be dependent upon the juvenile court,” she has not established eligibility for SIJ status. 8 C.F.R. § 204.11(c)(5). For this reason, the petition may not be approved.

Counsel makes a statement on Form I-290B, as quoted above. However, counsel has not clearly articulated assertions that may be answered by the AAO. For example, counsel references a statute that “provides for adoption outside of juvenile court jurisdiction,” yet provided no cite to provisions regarding adoption outside of juvenile court jurisdiction in the Act or regulations. *Statement from Counsel on Form I-290B*. Counsel states that “[c]ourt orders clearly show juvenile court had active court proceedings after hearing date,” yet counsel did not identify the hearing to which she refers, or the significance of continued proceedings. *Id.* Counsel states that the “[s]tatute [is] vague,” but she fails to specifically reference any portions of the Act. *Id.* Counsel references the Equal Protection Clause of the U.S. Constitution, yet she fails to explain the relevance of such clause to the present matter. *Id.* Counsel references “[c]lear congressional intent to adjudicate until age 21,” yet she has not clarified this vague statement, or cited any materials to reflect that the district director’s decision was incongruent with Congresses intent in creating the SIJ classification. *Id.* The supplementary materials submitted after the Form I-290B was filed failed to provide new facts, clarify counsel’s contentions, or make assertions that the district director’s decision was based on an erroneous interpretation of law. Accordingly, counsel has not shown that the district director’s decision was incorrect based on the record.

Based on the foregoing, the applicant has not shown that she meets the requirements for SIJ status as provided in sections 203(b)(4) and 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11(c). 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 shown eligibility for the benefit sought. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.