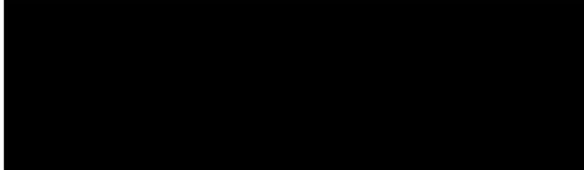


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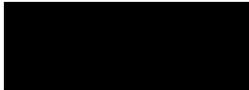
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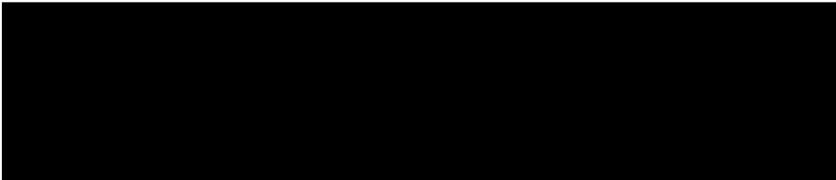
AUG 03 2007

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

The applicant is a 19-year-old native and citizen of the Bahamas. 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 applicant filed her Form I-360 petition for SIJ status on June 6, 2006. The district director approved the petition on October 2, 2006. On November 9, 2006, the district director issued a Notice of Intent to Revoke approval of the Form I-360 petition. The applicant responded with additional information and evidence, yet the district director found that the applicant failed to overcome the stated grounds for revocation and revoked the petition on January 12, 2007. Specifically, 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, despite that fact that the Circuit Court of the Eleventh Judicial Circuit In and For Miami-Dade County, Florida, Juvenile Division (“juvenile court”) extended its jurisdiction over the applicant, as permitted by Florida Statute section 39.013(2).

On appeal, counsel for the applicant contends that the district director misinterpreted federal and Florida law regarding whether the applicant is “eligible for long-term foster care,” as required by the regulation at 8 C.F.R. § 204.11(c)(5). *Statement from Counsel on Form I-290B*, dated February 9, 2007.

The record contains statements from counsel; a copy of the applicant’s birth certificate; a best interest order from the juvenile court issued on January 28, 2005; a custody status order from the juvenile court, dated January 1, 2003; a custody release order from the juvenile court, dated January 7, 2003; a dependent petition filed with the juvenile court by the Florida Department of Children and Families (FDCF); an order from the juvenile court extending its jurisdiction over the applicant beyond her 18th birthday, dated April 25, 2006; a copy of the applicant’s mother’s death certificate, and; a letter from the foster care organization Neighbor to Family confirming that the applicant was in the dependency custody of the FDCF as of March 15, 2006. 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 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.

Florida Statute section 39.013(2) provides the following, in pertinent part:

Procedures and Jurisdiction. . . . If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under [section] 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

See also Fla. Child Welfare Administrative Rule 65C-31.010(1)(b)(2).

The issue in the present matter is whether the applicant continues to be eligible for long-term foster care, as contemplated by the regulation at 8 C.F.R. § 204.11(c)(5). As noted above, on January 28, 2005, the juvenile court issued a best interest order finding that: 1) the applicant is dependent on the court; 2) the applicant is eligible for long-term foster care; 3) it is not in the applicant's best interest to be returned to the Bahamas; 4) it is in the applicant's best interests to remain in the United States, and; 5) the juvenile court's conclusions were made pursuant to a finding of abuse, neglect, or abandonment of the applicant. *Best Interest Order*, dated January 28, 2005. On April 25, 2006, the juvenile court issued an order providing that it would retain jurisdiction over the applicant until her 22nd birthday for the following purposes: 1) for the court to review and determine whether appropriate aftercare support has been provided to the applicant; 2) for the court to review and determine whether Road to Independence Scholarship information and related services have been provided to the applicant; 3) for the court to review and determine whether transitional support has been provided to the applicant; 4) for the court to review and determine whether mental health and developmental disability services have been provided to the applicant; 5) for the applicant to pursue special immigrant juvenile status. *Juvenile Court Order to Retain Jurisdiction*, dated April 25, 2006.

The district director noted that the applicant had reached age 18. The district director cited Florida Statute section 39.013(2), quoted above, and indicated that the statute does not state that the retention of jurisdiction by the juvenile court allows a child to remain eligible for long-term foster care. *Decision of the District Director*, dated January 12, 2007. The district director stated that "the statute only allows the juvenile court to retain jurisdiction of a formerly dependent child in order to allow the federal authorities to make a final determination on the petition and application." *Id.* at 3. Accordingly, the District Director found that the applicant did not satisfy the regulation at 8 C.F.R. § 204.11(c)(5), as she failed to show that she "[c]ontinues to be dependent upon the juvenile court and eligible for long-term foster care."

On appeal, counsel asserts that the juvenile court's order establishes that the applicant continues to be "eligible for long-term foster care" as contemplated by the regulation at 8 C.F.R. § 204.11(c)(5). *Statement from Counsel on Form I-290B*, dated February 9, 2007. Counsel observes that, in order for an applicant to show that she is "eligible for long-term foster care," she need only show that a juvenile court has determined that "family reunification is no longer a viable option." *Id.* (citing 8 C.F.R. § 204.11(a)). Counsel contends that the district director's revocation was based on an incorrect interpretation of the federal law pertaining to

SIJ status and the Child Welfare Administrative Rule for the Florida Department of Children and Families. *Id.*

Upon review, the applicant has shown that she meets the requirements of 8 C.F.R. § 204.11(c)(5). The best interest order was issued on January 28, 2005, when the applicant was age 16. The juvenile court found that she was dependent on the court and she was eligible for long-term foster care, as it was not viable for the applicant to be reunified with her family. Thus, the applicant met the requirements of 8 C.F.R. § 204.11(c)(3) and (4). Pursuant to its authority under Florida Statute section 39.013(2), the juvenile court ordered that it would retain jurisdiction over the applicant until her 22nd birthday. *Juvenile Court Order to Retain Jurisdiction*, dated April 25, 2006. The district director determined that the applicant was no longer eligible for long-term foster care in the State of Florida, effectively finding that the juvenile court's continued jurisdiction beyond the applicant's 18th birthday did not preserve the applicant's eligibility for long-term foster care as required by 8 C.F.R. § 204.11(c)(5).

However, the regulation at 8 C.F.R. § 204.11(a) states that eligibility 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." Thus, the regulation at 8 C.F.R. § 204.11(c)(5) does not require an applicant to directly establish that she meets all State requirements to be placed into a foster care program. In light of 8 C.F.R. § 204.11(a), an applicant may meet the foster care component of 8 C.F.R. § 204.11(c)(5) by showing that the juvenile court on which she is dependent continues to find that it is not viable for her to be reunited with her family. 8 C.F.R. § 204.11(a).

In the present matter, the juvenile court's best interest order states that, due to abuse, neglect, or abandonment of the applicant, she is eligible for long-term foster care, she is dependent on the court, it's not in her best interests to be returned to the Bahamas, and it is in her best interest to remain in the United States. *Best Interest Order* at 1. The court reviewed and cited a dependent petition filed by the FDCF which states that the applicant's mother is deceased and her father's whereabouts are unknown. *Id.*; *Dependent Petition*, dated April 2, 2004. Thus, it is evident that the court determined that it was not viable for the applicant to be reunited with her father. *Id.*

The juvenile court's determination was based on clearly stated findings of neglect and abandonment of the applicant by her parents. The juvenile court provided that it is retaining jurisdiction over the applicant until her 22nd birthday, pursuant to Florida Statute section 39.013(2). The juvenile court made no indication that its findings in the best interest order would expire on the applicant's 18th birthday, or at any time prior to her 22nd birthday. Nor does the record reflect that the juvenile court has issued a subsequent order amending its findings or its retention of jurisdiction. Thus, by the juvenile court retaining jurisdiction, the applicant remains dependent upon the court and the determination of the non-viability of family reunification remains effective. *Best Interest Order* at 1.

Based on the foregoing, the applicant "continues to be dependent upon the juvenile court and eligible for long-term foster care," as contemplated by the regulations at 8 C.F.R. §§ 204.11(a) and (c)(5).

The AAO finds that the applicant has established 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). Accordingly, the district director's decision will be withdrawn and the petition will be approved.

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 shown eligibility for the benefit sought. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.