



U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI

Date: 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

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 sixteen-year-old native and citizen of the Bahamas 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 January 8, 2007 denying the petition for special immigrant juvenile (SIJ) status. Specifically, the district director found that the applicant failed to show that he was abandoned or neglected, such that the Department of Homeland Security (DHS) should consent to his special interest order serving as a precondition to a grant of special immigrant juvenile status under section 101(a)(27)(J)(iii) of the Act.

On appeal, counsel for the applicant contends that the district director exceeded her authority by disregarding the order of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, ("juvenile court") and making her own determination of whether the applicant has been abused, abandoned, or neglected by his parents. *Brief in Support of Appeal*, submitted April 11, 2007. Counsel contends that the present SIJ petition should be approved. *Id.*

The record contains a brief from counsel in support of the appeal; a copy of a special interest order from the juvenile court; a copy of a motion for entry of special interest order that was submitted to the juvenile court; a copy of the applicant's birth certificate; a copy of an order appointing a guardian for the applicant; a copy of a police report reflecting that the applicant was removed from his aunt's home; a copy of an "Affidavit and Petition for Placement in Shelter" filed before the juvenile court by the State of Florida Department of Children and Families (FDCF); a copy of a dependency shelter order issued by the juvenile court placing the applicant in the care of the FDCF on January 18, 2007; a copy of a supplementary guardianship plan from the juvenile court addressing changed conditions since the applicant was removed from his aunt's home, dated January 24, 2007; a copy of the applicant's passport; a copy of the applicant's mother's death certificate; documentation regarding the applicant's educational activities. 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

On May 24, 2006, the juvenile court issued an order finding that: the applicant is a dependent child; the applicant has been abandoned by both his mother and his father; the applicant is eligible for long-term foster care as reunification with his family is no longer a viable option; it is not in the applicant's best interest to be returned to the Bahamas, and; it is in the applicant's best interest to remain in the United States. *Special Interest Order from the Juvenile Court*, dated May 24, 2006. The juvenile court added that the applicant's mother died when he was nine years old, and the applicant's father makes no effort to communicate with or support the applicant, either financially or emotionally. *Id.* at 2. The juvenile court stated that the applicant is a neglected child because both of his parents have deprived him of necessary food, clothing, shelter and medical treatment in the United States. *Id.* The juvenile court provided that the applicant's parents have

permitted him to live in an environment that has caused his physical, mental, and emotional health to be impaired or to be in danger of significant impairment. *Id.*

The record contains a copy of a motion for entry of special interest order that was submitted to the juvenile court that explained in detail the conditions of neglect and abandonment that caused the applicant to require State care. *Motion for Entry of Special Interest Order*, dated May 24, 2006. As the juvenile court included in its special interest order detailed findings of fact regarding the treatment of the applicant by his parents, the basis for the court's findings were established in the order. As a result of the applicant's dependency, the juvenile court appointed [REDACTED] as a guardian for him. *Order Appointing Guardian of Person of Minor*, dated May 24, 2006.

The record reflects that the applicant received some care from his aunt, [REDACTED], yet the applicant's aunt had no legal obligation to the applicant, and she ultimately had him removed from her home after a dispute. *Affidavit and Petition for Placement in Shelter*, dated January 18, 2007. The juvenile court issued a dependency shelter order on January 18, 2007 placing the applicant in the shelter care of the FDCF. *Dependency Shelter Order*, dated January 18, 2007. The juvenile court issued a supplemental guardianship plan reflecting that the applicant will no longer reside with his aunt during weekdays, and that he has been placed into a foster home. *Supplemental Guardianship Plan*, dated January 24, 2007.

The district director stated that the applicant's aunt has supported him and fulfilled his needs. *Decision of the District Director*, dated January 8, 2007. The district director indicated that the record lacks adequate evidence to show the basis for the juvenile court's special interest order, and that a document referred to as a "petition for appointment of guardian" was not submitted. *Id.* The district director stated that there is no evidence that the applicant cannot be returned to the Bahamas. *Id.* Based on these observations, the district director found that the applicant failed to show that he is a neglected child, such that the Department of Homeland Security (DHS) should consent to his best interest order serving as a precondition to a grant of special immigrant juvenile status under section 101(a)(27)(J)(iii) of the Act.

On appeal, counsel contends that the district director exceeded her authority by disregarding the order of the juvenile court and making her own determination of whether the applicant has been abused, abandoned, or neglected by his parents.

Upon review, the applicant has established that the juvenile court's special interest order may serve as a precondition to the grant of special immigrant juvenile status. As noted above, section 101(a)(27)(J)(iii) of the Act provides that the Secretary of Homeland Security must expressly consent to the applicant's dependency order serving as a precondition to the grant of special immigrant juvenile status.

Express consent means that the Secretary, through the CIS District Director, has "determine[d] that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect [or abandonment.]"

Memorandum of William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, *Field Guidance on Special Immigrant Juvenile Status Petitions*, HQAND 70/23, dated May 27, 2004(quoting H.R. Rep. No. 105-405, at 130 (1997)).

Citizenship and Immigration Services (CIS) is not bound to accept the determination of a state juvenile court that an applicant is an abused, neglected or abandoned minor, or that it is not in his best interest to be returned to his country of nationality, without sufficient indication of the basis for the decision. While such an order is required to establish eligibility under section 101(a)(27)(J) of the Act, it does not relieve the applicant from the burden of satisfying CIS that the order was supported by relevant facts, and that it may serve as a basis for special immigrant juvenile status.

[E]xpress consent [to an order] should be given only if the adjudicator is aware of the facts that formed the basis for the juvenile court's rulings on dependency (or state custody), eligibility for long-term foster care based on abuse, neglect, or abandonment, and non-viability of family reunification, or the adjudicator determines that a reasonable basis in fact exists for these rulings.

Memorandum of William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, *Field Guidance on Special Immigrant Juvenile Status Petitions* at 4.

In the present matter, the record supports that the juvenile court's special interest order was supported by relevant facts. The order itself articulates sufficient findings of fact made by the juvenile court that served as the basis for its determination that the applicant is a neglected and abandoned child. Thus, the juvenile court's order, by itself, establishes the facts that formed the basis for its rulings, such that CIS will give express consent to the order serving as a precondition to SIJ status.¹ See Memorandum of William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, *Field Guidance on Special Immigrant Juvenile Status Petitions* at 4.

The record contains further documentation to support the juvenile court's order, including a motion for entry of special interest order and the applicant's mother's death certificate. The district director indicated that a document referred to as a "petition for appointment of guardian" was not submitted. However, the document was not requested by the district director, and the AAO finds that, in its absence, the record contains sufficient documentation to support the juvenile court's findings of abandonment and neglect.

An adjudicator must be "aware of the facts that formed the basis for the juvenile court's rulings on dependency (or state custody), eligibility for long-term foster care based on abuse, neglect, or abandonment, and non-viability of family reunification," or the adjudicator must determine that "a reasonable basis in fact exists for [the juvenile court's] rulings." Memorandum of William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, *Field Guidance on Special Immigrant Juvenile Status Petitions* at 4. As in the present matter, where a juvenile court's order clearly articulates the facts that serve

¹ It is noted that all documentation in the record is consistent with the juvenile court's findings of fact, and the juvenile court was apprised of all material facts that relate to whether the applicant is an abused, neglected, and abandoned child.

as the basis of its findings, CIS is accordingly “aware of the facts that formed the basis for the juvenile court’s rulings.” *Id.* CIS is not charged with the task of making a *de novo* determination of whether an applicant is an abused, neglected, or abandoned child, and thus deference is given to state juvenile court’s where their rulings are supported by relevant facts. *Id.*

Based on the foregoing, the record establishes the basis for the juvenile court’s order of May 24, 2006, such that the Secretary of Homeland Security is inclined to consent to the order serving as a precondition to the grant of special immigrant juvenile status. *See* section 101(a)(27)(J)(iii) of the Act. The AAO finds that the applicant meets the remaining requirements for SIJ status as provided in sections 203(b)(4) and 101(a)(27)(J) of the Act and regulation at 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 not proven eligibility for the benefit sought.

ORDER: The appeal is sustained.