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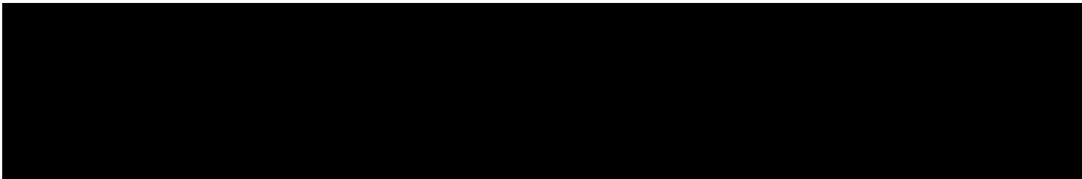
IN RE: Petitioner:

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is an eighteen-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).

Procedure

The district director issued a decision on August 9, 2006 denying the petition for SIJ status. Specifically, the district director found that the applicant failed to submit sufficient documentation to support that the Department of Homeland Security (DHS) should consent to his dependency order serving as a precondition to a grant of SIJ status under section 101(a)(27)(J)(iii) of the Act. The district director indicated that the record contains inconsistencies that call into question the applicant's true identity. The district director further stated that the applicant failed to show that the Secretary of DHS gave specific consent to a Florida juvenile court taking jurisdiction over the applicant.

On appeal, counsel for the applicant contends that there is insufficient basis for the district director to challenge the determination of the Seventeenth Judicial Circuit Court in and for Broward County, Florida ("juvenile court") that the applicant is an "abused, neglected or abandoned minor," and the petition should be approved. *Brief in Support of Appeal*, received July 6, 2005. Counsel further asserts that the applicant has established his identity with clear evidence. Counsel finally contends that the applicant did not have the burden to obtain specific consent of the Secretary of DHS to the juvenile court's jurisdiction.

Evidence

The record contains a brief from counsel in support of the appeal; a copy of an order from the juvenile court regarding the applicant's eligibility for special immigrant juvenile status; a copy of an order from the juvenile court awarding temporary custody of the applicant to his uncle; a copy of a petition filed with the juvenile court regarding the applicant's eligibility for SIJ status; a petition for custody filed with the juvenile court by the applicant's uncle; a copy of a Haitian *Acte De Naissance* (birth certificate) for the applicant; a letter from an individual named [REDACTED] who claims to be the applicant's mother, submitted to U.S. immigration authorities consenting to the applicant residing with his aunt in the United States; copies of [REDACTED]'s Haitian passport and U.S. B-1/B-2 visa; documentation in connection with the applicant's application for asylum, and; documentation in connection with the applicant's apprehension upon his attempted entry to the United States. The entire record was considered in rendering this decision.

Applicable Law

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

Title V of Florida Statute Chapter 39.01(12) states, in pertinent part:

“Child” or “youth” means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

Title V of Florida Statute Chapter 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 Florida Child Welfare Administrative Rule Chapter 65C-31.010(1)(b)(2).

Florida Rule of Juvenile Procedure section 8.415(f)(9) provides the following:

Judicial Review of Dependency Cases, Court Action. 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 solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction shall terminate on the final decision of the federal authorities, or on the immigrant child's 22nd birthday, whichever occurs first.

The Applicant Has Aged Out

As a preliminary matter, the applicant is no longer eligible for SIJ status, as he is no longer “dependent upon the juvenile court and eligible for long-term foster care,” as required by the regulation at 8 C.F.R. § 204.11(c)(5). The applicant reached age 18 on May 30, 2006. Pursuant to Title V of Florida Statute Chapter 39.01(12), the applicant ceased to be a “child” on that date. As noted above, Title V of Florida Statute Chapter 39.013(2) and Florida Rule of Juvenile Procedure section 8.415(f)(9) allow a Florida juvenile court to retain jurisdiction over an individual beyond age 18 for the purpose of allowing a previously-filed petition for SIJ status to proceed before United States Citizenship and Immigration Services (USCIS.) However, the applicant has not submitted any evidence to show that the juvenile court retained jurisdiction beyond his eighteenth birthday.

Based on the foregoing, the applicant is no longer eligible for SIJ status due the fact that he no longer meets the regulatory requirements at 8 C.F.R. § 204.11(c)(5). For this reason, the petition may not be approved.

The Applicant Has Not Established His Identity

Even if the applicant had not aged out, we affirm the district director's denial because the applicant has not met his burden of establishing his identity. As observed by the district director, the applicant has not clearly established his identity, or the identity of his parents. The record contains inconsistent statements and documentation regarding who are the applicant's parents. Upon apprehension by U.S. border patrol agents on or about September 26, 2000, the applicant stated that he was born in Port-au-Prince, Haiti, his mother was [REDACTED], and his father was [REDACTED]. See Form I-213, Record of Deportable/Inadmissible Alien. On September 6, 2001, the applicant submitted a Form I-589, Application for Asylum and Withholding of Removal, in which he stated that he was born in Limbe, Haiti, his mother was [REDACTED] and his father was [REDACTED]. The applicant submitted a copy of an *Acte De Naissance* (birth certificate) that indicates that he was born in Simonette, Haiti (a section of the Bas-Limbe community), his father was [REDACTED], and his mother was [REDACTED]. The record contains a letter from a woman named [REDACTED], in which she claims that she is the applicant's mother.

In an undated petition for custody from the applicant's uncle that was submitted to the juvenile court, the applicant's uncle's counsel indicated that the applicant's mother was [REDACTED] and his father was [REDACTED]. This petition also provided that the applicant and his sister, [REDACTED] had different fathers yet the same mother. However, in a separate petition for custody from the applicant's uncle before the juvenile court, the applicant's uncle's counsel indicated that the applicant's father was [REDACTED] and that the applicant and his sister, [REDACTED] had the same father.

In summary, the record contains indications that the applicant's mother was [REDACTED] and [REDACTED]. The record contains indications that the applicant's father was [REDACTED] and [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent, objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent, objective evidence pointing to where the truth lies. It is noted that, despite the fact that the district director raised the question of the applicant's identity, the applicant presents no new evidence of his identity on appeal.

Upon review, some of these discrepancies can be reasonably explained. For example, the appearance of the names [REDACTED], and [REDACTED] can be attributed to differences in translation and spelling, such that [REDACTED] and [REDACTED] refer to the same individual (hereinafter referred to as [REDACTED]). However, the applicant has not addressed the fact that his uncle claimed in one petition that the applicant shared the same father, [REDACTED] with his sister, yet the majority of documents in the record indicate that the applicant had a separate father [REDACTED].

The majority of documents in the record refer to the applicant's mother as [REDACTED]. However, an individual named [REDACTED] submitted a letter to DHS on November 16, 2000 claiming to be the applicant's mother with authority to consent to the applicant's residence with his aunt. It is noted that counsel discusses [REDACTED]'s correspondence to DHS without questioning whether [REDACTED] is in

fact the applicant's mother. *Brief from Counsel* at 5, submitted November 8, 2006. The AAO finds that the record does not contain sufficient documentation or explanation to establish by a preponderance of the evidence that [REDACTED] and [REDACTED] are the same person.

Counsel notes that the applicant stated that his father was [REDACTED] and his mother was [REDACTED] to immigration authorities when he was twelve-years-old, and that the conditions in which he provided this testimony undermine its reliability. *Brief from Counsel* at 16. Specifically, counsel points out that the applicant was an unaccompanied minor, he was in custody of authorities, and he had just completed a perilous journey across open seas. *Id.* at 16. Counsel states that [REDACTED] and [REDACTED] are the applicant's uncle and aunt, and considering the applicant was without his parents, it was reasonable that he would provide the names of different adult relatives. *Id.* at 17. Counsel further notes that DHS has a practice of recognizing that minors are different than adults, and thus they warrant different treatment. *Id.* at 16.

The AAO agrees that the conditions of the applicant's testimony upon apprehension, including his status as a twelve-year-old minor, must be considered in assessing its evidentiary weight. However, while counsel asserts that [REDACTED] and [REDACTED] are the applicant's uncle and aunt, the applicant has provided no evidence to support this contention, or to show the relationship of these two individuals to the applicant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, in light of the fact that the record contains other inconsistent indications of who are the applicant's parents, the applicant's statements upon apprehension may be properly questioned and analyzed, and they call into question who are his true parents.

Counsel asserts that the birth certificate submitted by the applicant is sufficient evidence of the applicant's identity, and that USCIS's "concern regarding his identity is without merit." *Brief from Counsel* at 16. However, in light of the inconsistencies discussed above, the *Acte De Naissance* submitted by the applicant is not deemed a reliable and conclusive document.

Archives National d'Haiti" is the National Archives in Port-au-Prince and is the only Haitian agency with the authority to issue extracts related to acts of birth, death, marriage, and divorce. Each of these documents is based on an "acte" of birth, death, marriage, and divorce; this "acte" is rarely sufficient for [*Institut du Bien Etre Social et de Recherches (IBESR)*] or U.S. immigration purposes.

U.S. Department of State: Intercountry Adoption (Haiti)
<http://travel.state.gov/family/adoption/country/country_392.html>.

The U.S. Department of State Foreign Affairs Manual states the following regarding civil records in Haiti:

At the time of registration, a hand-written certificate on official, stamped paper is issued by the registrar of the section in which registration takes place. The record is also entered into an official register, which is transferred to the National Archives in Port-au-Prince, usually after one year. Once this transfer occurs, a transcript of the record, known as an *extrait*, can be

obtained from the National Archives. Official, double-folded, stamped paper first must be obtained from the Bureau de Contributions for a fee. The National Archives prepares requested extracts on the official paper

Original certificates are extremely difficult to verify. When there is doubt about the identity or the relationship in question, an extrait should be requested as well as secondary evidence.

9 FAM Appendix C (Haiti).

The IBESR is the sole authority to provide authorization to adopt a child in Haiti. *U.S. Department of State: Intercountry Adoption (Haiti)*. IBESR also accredits adoption agents and orphanages in Haiti. *Id.* The fact that IBESR, a government agency in Haiti, rarely finds an *Acte De Naissance* to be sufficient evidence of a child's parentage or identity calls into question the evidentiary value of the applicant's *Acte De Naissance* in the present proceeding. The applicant has not provided an extrait of his birth, nor has he indicated that one is not available. When a record presents significant inconsistencies regarding an applicant's identity, as in the present matter, an *Acte De Naissance* is not sufficient to establish an applicant's identity by a preponderance of the evidence.

Based on the foregoing, the applicant has not established by a preponderance of the evidence his true identity, or the identity of his parents.

The applicant's and the applicant's parents' identities are fundamental to the present application, as USCIS must weigh evidence and testimony to determine if alleged facts meet the criteria of section 101(a)(27)(J) of the Act and the regulation at 8 C.F.R. § 204.11(c). Without confirmation of the applicant's identity, USCIS cannot conclude that the events described in fact pertained to the applicant. Without establishing his identity by a preponderance of the evidence, the applicant may not show that he is eligible for SIJ status. For this additional reason, the petition may not be approved.

The Applicant Has Not Shown that DHS Should Consent to His Dependency Order Serving as a Precondition to a Grant of SIJ Status

The district director found that the applicant failed to submit sufficient documentation to support that the Department of Homeland Security (DHS) should consent to his dependency order serving as a precondition to a grant of SIJ status under section 101(a)(27)(J)(iii) of the Act. However, counsel contends that there is insufficient basis for the district director to challenge the determination of the juvenile court that the applicant is an "abused, neglected or abandoned minor," and that USCIS has effectively made an impermissible determination of abuse, abandonment, or neglect. *Brief in Support of Appeal* at 6-15.

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 (May 27, 2004)(quoting H.R. Rep. No. 105-405, at 130 (1997)).

USCIS 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 documentation 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 submitting sufficient documentation to satisfy the district director 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* ("Yates Memo") at 4.

On May 12, 2006, the district director issued correspondence to the applicant requesting copies of documentation submitted to the juvenile court and other evidence in connection with that proceeding, including motions, orders, pre-dispositional reports, petitions, and evidence presented to the court to establish abandonment. In a response dated May 19, 2006, [REDACTED] Team Child Project Attorney for Legal Aid Services for Broward County, indicated that "[t]he Petition and Motion were submitted to the court as they are." *Letter from* [REDACTED], dated May 19, 2006. [REDACTED] explained that the judge heard testimony from the applicant, the applicant's sister, and the applicant's uncle. *Id.* at 1. [REDACTED] stated that the applicant was questioned regarding his abandonment by [REDACTED]. *Id.* at 1-2. Mr. [REDACTED] stated that the applicant testified that the whereabouts of his mother are unknown. *Id.* at 2. Mr. [REDACTED] provided that the applicant's uncle testified that he traveled to the Bahamas to look for the applicant's mother, yet he was unable to locate her. *Id.*

The district director noted that DHS records indicate that [REDACTED] entered the United States on July 26, 2000, two months prior to the applicant's arrival on September 26, 2000, and that she made subsequent entries on November 11, 2000, October 14, 2002, and December 27, 2003. The district director referenced [REDACTED]'s letter of November 16, 2000 in which she claimed to be the applicant's mother with authority to consent to the applicant's residence with his aunt. The district director questioned whether the applicant was in fact an abandoned child, or whether he was transported to the United States in a coordinated effort by his mother. *Decision of the District Director* at 4. The district director noted that, while the applicant claimed to have had no meaningful contact with his mother since 1992, the fact that Marie

_____ has made numerous trips to the United States before and after his arrival suggests otherwise. *Id.* The district director commented that “[i]t is unclear to what extent these facts were made known to the [juvenile] court.” *Id.*

The petition submitted to the juvenile court referenced the applicant’s mother as _____. The record does not reflect that the court was made aware that an individual named _____ claims to be the applicant’s mother, or that _____ made trips to the United States before and after the applicant’s arrival. Nor does the record show whether the court was aware that _____ contacted U.S. government authorities less than two months after the applicant’s arrival to provide consent to the applicant’s residence with his aunt in the United States. Nor does the record show whether the court was aware that, upon the applicant’s entry to the United States, he first reported his mother to be _____.

The AAO agrees with counsel that it is not USCIS’s role to make a *de novo* determination of whether an applicant is an abused, neglected or abandoned minor. If an applicant submits a dependency order from a juvenile court with proper jurisdiction, USCIS will generally defer to the judgment of such court where the record clearly shows that the order was based on relevant facts and sufficient evidence. *See Yates Memo* at 4. However, in the present matter, the record contains material facts that the applicant has not shown were presented to the juvenile court. The record does not support that the juvenile court was given adequate opportunity to question the applicant and his relatives regarding inconsistencies in his identity, his mother’s identity, and his mother’s whereabouts. Had the juvenile court been provided with complete information, its conclusion regarding abandonment may have been different.

Accordingly, the district director properly withheld consent to the dependency order serving as a precondition to a grant of SIJ status, pursuant to section 101(a)(27)(J)(iii) of the Act. For this additional reason, the petition may not be approved.

Specific Consent to Jurisdiction of the Juvenile Court

The district director requested that the applicant submit evidence that DHS provided specific consent to the jurisdiction of the juvenile court to issue an order regarding the applicant’s status as an abused, neglected, or abandoned minor. In her decision, the district director stated that “[t]here is no evidence of specific consent by the Secretary of Homeland Security for the assumption of jurisdiction by the Florida court.” *Decision of the District Director* at 4. The district director suggested that specific consent is required based on the decision of the District Court of Appeal of the State of Florida, Fourth District in *P.G. v. Department of Children and Family Services*, 867 So.2d 1248 (Fla. 4th DCA 2004). Counsel maintains that specific consent was not required, as the applicant is not in the actual or constructive custody of DHS as contemplated by section 101(a)(27)(J)(iii)(I) of the Act. *Brief from Counsel* at 18.

The AAO notes that the district director did not indicate that lack of specific consent served as an independent basis for denial of the petition. The district director denied the petition based on a withholding of express consent to the dependency order, as discussed above. Therefore, the AAO need not address this issue further. However, the AAO notes that the decision in *P.G. v. Department of Children and Family Services* was issued by a court of the state of Florida, and thus, while it is instructive, it does not serve as binding precedent on USCIS officers.

Conclusion

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.