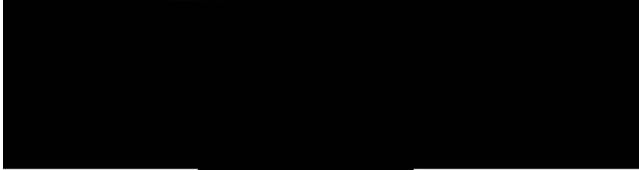


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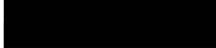
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: PROVIDENCE, RHODE ISLAND

Date: JUL 09 2008

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 Field Office Director, Providence, Rhode Island, 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 Guatemala. He 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 Field Office Director found that the applicant failed to establish eligibility for special immigrant juvenile status because he failed to establish he had been declared dependent upon a juvenile court while under the jurisdiction of the court as required by 8 C.F.R. § 204.11(c)(3). Specifically, the Field Office Director stated that the Probate Court for the City of Providence, which declared the applicant dependent and appointed the applicant's second cousin as guardian, had no authority to make such a decree. *See Decision of Field Office Director*, dated May 24, 2007, at 3. The Field Office Director cited a Rhode Island statute conferring exclusive jurisdiction in proceedings concerning dependent children on the Family Court and stated that the Probate Court had no authority to make rulings on the applicant's status as a dependent child. The petition was denied accordingly. *See Decision of Field Office Director* at 3.

On appeal, counsel for the applicant contends that U.S. Citizenship and Immigration Services (CIS) erred in concluding that the Probate Court for the City of Providence lacks authority to issue decrees regarding dependent minors. *See Form I-290B*, dated December 19, 2007, at 1. Counsel asserts that the Probate Court has authority to conduct such proceedings under Rhode Island law and cites Rhode Island General Law § 33-15.1-4, which states that probate courts in each city or town, "if occasion shall require, shall have power to appoint or approve guardians . . . of the person or estate of minors" residing in that city or town. *Id.* at 2. Counsel states that there is some overlap between the jurisdictions of the Probate Courts and Family Court and maintains that CIS erred in determining that the Family Court has exclusive jurisdiction over dependency proceedings and thus finding the Probate Court's guardianship order to be invalid. *Id.*

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 chapter

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.

The record reflects that the applicant was born in Rio Hondo, Zacapa, Guatemala on August 27, 1986. On March 16, 2004, the applicant was apprehended after entering the United States without inspection near

Brownsville, Texas and was taken into the custody of the Department of Homeland Security (DHS). The applicant was later released to the custody of his second cousin, a Lawful Permanent Resident residing in Providence, Rhode Island. On July 15, 2004, the Probate Court for the City of Providence (“the Juvenile Court”) appointed the applicant’s second cousin and his wife as guardians and issued an order declaring that the applicant was eligible to be maintained as their ward on a long term basis, that it was in his best interest to remain in the United States, and that he entered the United States as an unaccompanied minor and is in need of care and support. *See Order of the Juvenile Court*, dated July 15, 2004. The applicant filed the present petition for SIJ status on October 22, 2006.

8 C.F.R. § 204.11(c)(1) requires that an applicant be under twenty-one years of age to be eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act. The applicant reached twenty-one years of age on August 27, 2007, and is therefore no longer eligible for SIJ status. Having found the applicant ineligible for relief pursuant to the controlling regulations, no purpose would be served in discussing whether the Juvenile Court in the present case had proper jurisdiction make rulings on the applicant’s status as a dependent child under Rhode Island law.

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. 493 (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.