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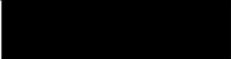


**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE:



Office: DETROIT, MICHIGAN

Date: **MAY 12 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, Detroit, Michigan, 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 Honduras 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 field office director issued a decision on August 20, 2007 denying the petition for special immigrant juvenile (SIJ) status. Specifically, the field office director found that the applicant failed to submit sufficient evidence to support the findings of the State of Michigan Judicial Circuit Family Court (“juvenile court”), such that the Secretary of the Department of Homeland Security (DHS) should consent to the juvenile court’s orders 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 field office director erroneously cited a document from the juvenile court that misstated the applicant’s immigration status. *Statement from Counsel on Form I-290B*, dated September 5, 2007. Counsel further asserts that the field office director incorrectly interpreted section 101(a)(27) of the Act with respect to Citizenship and Immigration Services’ (CIS) right to determine the best interests of the applicant. *Id.* Thus, counsel contends that the present SIJ petition should be approved. *Id.*

The record contains a statement from counsel on Form I-290B; orders from the juvenile court; a copy of the applicant’s birth certificate; a letter from a crisis center regarding the applicant’s mother; a statement from the applicant’s mother; a psycho-social evaluation of the applicant; a letter from a therapist regarding the applicant; a letter regarding the applicant’s placement in foster care, and; an assessment from a field coordinator regarding the applicant’s history and circumstances.

It is noted that counsel indicated on Form I-290B that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on September 18, 2007. However, as of February 5, 2008, the AAO had received no further documentation or correspondence from the applicant or counsel. On February 5, 2008, the AAO sent a facsimile to counsel with notice that a brief or additional evidence had not been received, and affording five days in which to provide a copy of any missing filing. As of the date of this decision, the AAO has not received a response to the facsimile, and the record is deemed complete.

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 suffered approximately 10 years of serious physical and emotional abuse by his father in Honduras, and his father ultimately forced him to leave the family home. The applicant's mother stated that she was unable to leave the applicant's father or protect the applicant. *Statement from the Applicant's Mother*, dated April 18, 2005. The applicant entered the United States at age 16 on or about March 1, 2005, yet he did not have a guardian or relative to care for him.

On January 4, 2006, the juvenile court issued an order finding that it was contrary to the welfare of the applicant to remain in his home because he was abused by his father and abandoned by his mother. *Order after Preliminary Hearing*, dated January 4, 2006. The juvenile court indicated that its finding was based on "Reasonable Efforts" made prior to the placement of the applicant in foster care to prevent or eliminate the need for removing him from his home. *Id.* at 1. The juvenile court noted that "Federal officials do not believe it is in the [applicant's] best interest to return to his native country." *Id.* The juvenile court placed the applicant with the Michigan Department of Human Services. *Id.* at 2.

The juvenile court issued a subsequent order on February 15, 2006, stating that the applicant was abused by his father and that his mother was unable to protect him. *Second Order from the Juvenile Court*, dated February 15, 2006. The juvenile court indicated that the findings in the February 15, 2006 order were based on an "Initial Service Plan" and an "Updated Service Plan." *Id.* at 1. The juvenile court placed the applicant in the temporary custody of the court and Lutheran Social Services, and recommended that the applicant be placed in long term foster care. *Id.* at 2. The juvenile court stated the following: "[R]eturning the [applicant] to his parents or his native land of Honduras may cause a substantial risk to his life, physical health or mental well-being . . . and that the best interest of the child is that foster care be continued on a long-term basis." *Id.*

On July 19, 2007, the juvenile court issued a third order reiterating findings in the prior orders and noting that the applicant is placed with the Department of Human Services Office of Refugee Assistance Program. *Third Order from the Juvenile Court*, dated July 19, 2007. The order indicated that the applicant has Special Immigrant Juvenile Status, and that he had been subjected to threats of violence by gang members in his native country. *Id.* at 1.

The field office director observed that the juvenile court order of January 4, 2006 noted that federal officials did not believe it was in the applicant's best interest to return to his native country. Yet, the field office director found that the applicant failed to submit sufficient evidence to show the source of the juvenile court's understanding of the opinion of federal officials in the present case. The field office director further noted that the juvenile court erroneously stated that the applicant already had SIJ status. Based on these observations, the field office director found that the applicant failed to adequately establish the basis for the juvenile court's findings, such that the Secretary should consent to the juvenile court's orders serving as a precondition to a grant of special immigrant juvenile status under section 101(a)(27)(J)(iii) of the Act.

Upon review, the AAO finds that the record contains sufficient documentation and explanation to support the juvenile court's findings, irrespective of the juvenile court's reference to the opinion of federal officials and erroneous statement of the applicant's immigration status. Thus, the applicant has established that the juvenile court's orders 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 DHS 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)).

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 orders were supported by relevant facts. The orders themselves report that the applicant was abused by his father and his mother was unable to protect him, which constitutes a finding of fact made by the juvenile court that served as the basis for its determination that the applicant is an abused and abandoned child. The findings of the juvenile court are supported by numerous documents in the record, including a letter from a crisis center regarding the applicant's mother; a statement from the applicant's mother; a psycho-social evaluation of the applicant; a letter from a therapist regarding the applicant; a letter regarding the applicant's placement in foster care, and; an assessment from a field coordinator regarding the applicant's history and circumstances. Accordingly, CIS will give express consent to the juvenile court's orders 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.

While the juvenile court referenced the opinion of federal officials regarding the applicant's circumstances, the juvenile court's orders do not show that the court relied on the judgment of federal officials, or that the court did not perform independent analysis. The juvenile court noted in its order of July 19, 2007 that the applicant already had SIJ status, yet the record does not reflect that the court relied on this erroneous understanding in forming its conclusions regarding the applicant's history or dependency status.

¹ It is noted that all documentation in the record is consistent with the juvenile court's findings, and that nothing in the record suggests that the juvenile court was not apprised of all material facts that relate to whether the applicant is an abused, neglected, and abandoned child.

Based on the foregoing, the record establishes the basis for the juvenile court's orders, such that the Secretary of DHS is inclined to consent to the orders 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 field office 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.