



U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
PUBLIC COPY**

C6

[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA

Date **MAY 23 2006**

IN RE: Petitioner:

Beneficiary:

[REDACTED]

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:

[REDACTED]

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

The beneficiary is a 20-year-old native and citizen of Russia 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 denied the petition for SIJ status, finding that that applicant is no longer eligible for SIJ status due to the fact that he reached the age of majority. *Decision of the District Director*, dated July 21, 2005.

On appeal, counsel for the applicant asserts that “[t]he Special Immigrant Juvenile statute and regulations encompass an applicant filing prior to his or her 21<sup>st</sup> birthday. This applicant was under 21 years of age at [the] time of filing and remains under 21 years of age today. The applicant qualifies for approval of the I-360 SIJ self-petition.” *Statement from Counsel on Form I-290B Appeal*, dated August 19, 2005. Counsel further notes that the Juvenile Court of Jackson County, Georgia issued two separate orders regarding the applicant on August 9, 2003. Counsel explains that the second order corrected errors in the first order. Only the first order was submitted with the Form I-360 application, and the applicant now submits a copy of the second order on appeal. 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 juvenile 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 was born on February 7, 1986. On December 27, 2002, the Juvenile Court of Jackson County, Georgia (juvenile court), issued two separate orders finding the applicant to be "deprived based on abandonment" pursuant to section 15-11-2 of the Georgia Code. The first order contains a handwritten and initialed notation from the judge the states "This Order shall expire on the child's eighteenth birthday unless sooner terminated by the Court." While such a notation is absent on the second order, Georgia State law renders the order effectively terminated no later than the applicant's eighteenth birthday.

As noted above, the juvenile court stated that section 15-11-2 of the Georgia Code serves as the authority for finding that the applicant is a deprived child. *See* Ga. Code Ann. § 15-11-2(8)(1997). Section 15-11-2(2) of the Georgia Code states the following:

As used in this chapter, the term:

- (2) 'Child' means any individual who is:

...

(C) Under the age of 18 years, if alleged to be a 'deprived child' or a 'status offender' as defined by this Code section.

Thus, under Georgia State law, an individual can no longer be deemed a deprived child once he or she reaches age eighteen. Therefore, as of February 7, 2004, the date that the applicant reached 18 years of age, both of the juvenile court's orders expired, and the applicant's dependency on the juvenile court ended.

As of July 21, 2005, the date of the director's decision, the applicant was no longer dependent upon the juvenile court. Therefore, the applicant failed to meet the requirement of the regulation at 8 C.F.R. § 204.11(c)(5), as provided above.

Counsel asserts that the statute and regulations regarding SIJ status allow for potential eligibility so long as an applicant files an application prior to his or her twenty-first birthday. *Statement from Counsel on Form I-290B Appeal*, dated August 19, 2005

An applicant's age is addressed in the implementing regulations found at 8 C.F.R. § 204.11, which provide that an applicant must be under twenty-one years of age to be eligible for SIJ status. Thus, federal law sets the maximum age that an applicant may be approved for SIJ status at twenty-one. Further, the regulation at 8 C.F.R. § 204.11(c)(5) requires that an applicant demonstrate that she "[c]ontinues 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." Thus, state law must be assessed to determine whether an applicant continues to be dependent upon the state juvenile court and eligible for long-term foster care. The Act and regulation defer to the particular state's determination of whether to treat an applicant as dependent and eligible for long-term foster care. As in the present case, when state law provides that an applicant is no longer dependent upon the juvenile court or eligible for long-term foster care at age eighteen, an applicant is effectively no longer eligible for SIJ status on his or her eighteenth birthday.

Counsel contends that the applicant may establish eligibility for SIJ status so long as she files her application prior to her twenty-first birthday. Yet, Citizenship and Immigration Services may not approve an application at a time when the applicant is no longer eligible for the benefit sought. As discussed above, the applicant was no longer eligible for SIJ status under section 101(a)(27)(J) of the Act as of July 21, 2005, the date of the director's decision.

Based on the foregoing, the AAO finds that the district director did not err as a matter of law in finding that the applicant was no longer eligible for SIJ status, having determined that the applicant was no longer dependent upon the juvenile court.

In visa petition proceedings, the burden of proof is on the petitioner 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 petitioner has not proven eligibility for the benefit sought.

**ORDER:** The appeal is dismissed.