



U.S. Citizenship
and Immigration
Services

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[REDACTED]

C-6

FILE:

[REDACTED]

Office: MIAMI

Date: SEP 20 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, Miami, revoked 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 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).

The district director approved the applicant's Form I-360 application for SIJ status on May 10, 2005. However, on January 30, 2006 the district director revoked the approval. The district director found that the applicant submitted inconsistent documentation and information regarding her true birth date, and thus the evidence of record did not support that she was under age 21 as required by 8 C.F.R. § 204.11(c)(1).

On appeal, counsel for the applicant contends that the applicant has provided sufficient documentation to show that she was under age 21 at the time the Form I-360 application was approved. *Statement from Counsel on Form I-290B*, dated February 27, 2006. Counsel asserts that, based on current Florida law, the applicant continued to be eligible for SIJ status. *Id.*

The record contains a statement from counsel on Form I-290B; copies of three separate birth records for the applicant; a statement from the applicant; copies of the applicant's high school transcripts; copies of documents in connection with the applicant's proceedings in immigration court; dependency orders from the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida; documentation relating to the applicant's prior Form I-589 application for asylum, and; a letter from the applicant's mother. 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;
- (3) Is unmarried;
- (4) 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;
- (5) Has been deemed eligible by the juvenile court for long-term foster care;
- (6) 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
- (7) 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 contains three separate birth records for the applicant, and inconsistent indications of her date of birth.

The applicant previously filed a Form I-589 application for asylum, on which she stated that she was born on December 9, 1982. With this application, the applicant submitted a copy of a Haitian birth certificate ("the first birth certificate"), created on July 2, 1983, that reflects that she was born on December 9, 1982. The first birth certificate provides that the applicant was presented at a temple on March 7, 1983. The record further contains a letter from the applicant's mother, dated October 27, 2000, in which she stated that the applicant was age 17 as of the date of the letter. If the applicant was born on December 9, 1982, she would have been age 17 as of October 27, 2000, which is congruent with her mother's statement in her letter.

Subsequently, on May 27, 2004, the applicant filed the present Form I-360 application for SIJ status, in which she stated that she was born on December 9, 1985. The applicant submitted a copy of a second Haitian birth certificate ("the second birth certificate"), created on December 20, 1994, that reflects that she was born on December 9, 1985.

On appeal, the applicant submits a third record to show the date of her birth, issued by the National Archives of Haiti. This document, created on May 26, 2006, reports that the applicant was born on December 9, 1985. Counsel asserts that December 9, 1985 is the applicant's true date of birth.

Upon review, the applicant has not provided sufficient evidence to establish her true birth date. While the applicant now submits a third record, ostensibly from the government of Haiti, to show her date of birth, she has provided no explanation or documentation to explain why she previously claimed a different birth date. Specifically, the applicant has not explained where she obtained the first birth certificate, whether it is an authentic document issued by the Haitian government, or why she submitted it as evidence of her date of birth when it conflicts with her present claim. Nor has the applicant stated why she provided a different date of birth to the U.S. government in her Form I-589 application for asylum. The applicant has not addressed the fact that her mother made prior statements that support that she was born in 1982, not 1985 as the applicant now claims. As the first birth certificate, the applicant's prior Form I-589, and the applicant's mother's prior statements all consistently reflect that the applicant was born in 1982, the AAO is unable to conclude that they conflict with the applicant's present claims due to typographical, translation, or other errors.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The fact that the applicant now submits a third document purportedly issued by the government of Haiti does not resolve the inconsistencies discussed above. In fact, the first and second birth certificates are presented on nearly identical forms. The certificates contain no basis to determine which, if either, is correct. Based on the foregoing, the AAO finds that the applicant has failed to show by a preponderance of the evidence what is her true birth date.

This fact is material, as the applicant's initially claimed birth date renders her ineligible for SIJ status as of the date of the district director's prior approval. If the applicant was born on December 9, 1982, she was age 22 on May 10, 2005, the date the Form I-360 application was approved. Pursuant to 8 C.F.R. § 204.11(c)(1), an individual is not eligible for SIJ status once she has reached age 21.

Based on the foregoing, the applicant has not established that she was eligible for SIJ status as of May 10, 2005, the date of the prior approval of her Form I-360 application for SIJ status. Accordingly, the applicant has failed to show that the district director's revocation was in error.

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.