



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

*06*

FILE:

Office: MIAMI

Date: JUN 05 2007

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*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Miami, 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 an 18-year-old native of the Bahamas, and his parents were citizens of Haiti. 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 district director found that the applicant failed to show that he continues to be eligible for long-term foster care in the State of Florida, despite that fact that the Circuit Court of the Eleventh Judicial Circuit In and For Miami-Dade County, Florida, Juvenile Division (“juvenile court”) extended its jurisdiction over the applicant until his 22<sup>nd</sup> birthday. The petition was denied accordingly.

On appeal, counsel for the applicant contends that the district director misinterpreted federal and Florida law regarding whether the applicant is “eligible for long-term foster care,” as required by the regulation at 8 C.F.R. § 204.11(c)(5). *Statement from Counsel in Form I-290B*, dated December 4, 2006.

The record contains a statement from counsel on Form I-290B; a brief from counsel; a copy of the applicant’s birth certificate; a copy of an order from the juvenile court issued on June 1, 2006; notes from an interview with the applicant; and; a copy of the applicant’s school records and identification card. 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 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.

Florida Statute section 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.

The issue in the present matter is whether the applicant continues to be eligible for long-term foster care, as contemplated by the regulation at 8 C.F.R. § 204.11(c)(5). The record contains an order from the juvenile court, issued on June 1, 2006, finding that: 1.) the applicant is dependent on the court; 2.) the applicant is an abused, neglected, and abandoned; 3.) the applicant is eligible for long-term foster care; 4.) it is no longer viable for the applicant to be reunified with his family; 5.) it is not in the best interests of the applicant to return to the Bahamas, and; 6.) it is in the best interests of the applicant to remain in the United States. *Order from the Circuit Court of the Eleventh Judicial Circuit In and For Miami-Dade County, Florida, Juvenile Division*, dated June 1, 2006. The juvenile court's order further stated the following:

[The juvenile court] shall retain jurisdiction of [the applicant's] cause pursuant to Florida Statute § 39.013(2) as it pertains to [the applicant] up until his 22<sup>nd</sup> birthday . . . for the purpose of making further or other orders herein for the welfare of [the applicant] . . . as may be from time to time found necessary.

*Id.* at 3. The district director noted that the applicant reached age 18. The district director cited chapter 65C-31.010 of the Florida Department of Children and Families Child Welfare Administrative Rules ("FDCFCWAR"), which states, in pertinent part:

(1)(b)(1) A youth may petition the court, for continued jurisdiction, anytime before his or her 19<sup>th</sup> birthday. This jurisdiction may continue for a period not to exceed one year beyond the youth's 18<sup>th</sup> birthday. The youth does not maintain "foster care" status as those who are under the age of 18. But instead the courts maintain jurisdiction for the purpose of determining whether the young adult is receiving appropriate adult services . . . .

The district director determined that, pursuant to FDCFCWAR chapter 65C-31.010(1)(b)(1), as of the applicant's 18<sup>th</sup> birthday he was no longer eligible for long-term foster care in the State of Florida. Accordingly, the district director found that the applicant did not satisfy the regulation at 8 C.F.R. § 204.11(c)(5), as he failed to show that he "[c]ontinues to be dependent upon the juvenile court and eligible for long-term foster care."

On appeal, counsel asserts that the juvenile court's order establishes that the applicant continues to be "eligible for long-term foster care" as contemplated by the regulation at 8 C.F.R. § 204.11(c)(5). *Brief in Support of Appeal*, submitted January 31, 2007. Counsel observes that, in order for an applicant to show that he is "eligible for long-term foster care," he need only show that a juvenile court has determined that "family reunification is no longer a viable option." *Id.* at 5 (citing 8 C.F.R. § 204.11(a)). Thus, counsel suggests that the applicant need not establish that he meets all of the criteria for placement in foster care in the State of Florida, so long as he shows that the juvenile court found that it is not viable for him to reunite with his family. *Id.* Counsel asserts that, by failing to follow the juvenile court's findings that family reunification is

no longer a viable option for the applicant, the district director made an impermissible *sua sponte* re-determination of the legal conclusions of the juvenile court. *Id.*

Upon review, the applicant has shown that he meets the requirements of 8 C.F.R. § 204.11(c)(5). On June 1, 2006 when the applicant was age 17, the juvenile court found that he was dependent on the court, he was eligible for long-term foster care, and that it was no longer viable for the applicant to be reunified with his family. Thus, the applicant met the requirements of 8 C.F.R. § 204.11(c)(3) and (4). Pursuant to its authority under Florida Statute section 39.013(2), the juvenile court ordered that it would retain jurisdiction over the applicant until his 22<sup>nd</sup> birthday. The district director determined that the applicant was no longer eligible for long-term foster care in the State of Florida, effectively finding that the juvenile court's continued jurisdiction beyond the applicant's 18<sup>th</sup> birthday did not preserve the applicant's eligibility for long-term foster care as required by 8 C.F.R. § 204.11(c)(5).

However, the regulation at 8 C.F.R. § 204.11(a) states that eligibility 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." Thus, the regulation at 8 C.F.R. § 204.11(c)(5) does not require an applicant to directly establish that he meets all State requirements to be placed into a foster care program. In light of 8 C.F.R. § 204.11(a), an applicant may meet the foster care component of 8 C.F.R. § 204.11(c)(5) by showing that the juvenile court on which he is dependent continues to find that it is not viable for him to be reunited with his family. 8 C.F.R. § 204.11(a).

In the present matter, the juvenile court's order explicitly states that family reunification is no longer a viable option for the applicant. The juvenile court's determination is based on clearly stated findings of abuse, neglect, and abandonment of the applicant by his parents. The juvenile court provided that it is retaining jurisdiction over the applicant "for the purpose of making such further or other orders herein for the welfare of [the applicant] . . . as may be from time to time found necessary." *Order from the Circuit Court of the Eleventh Judicial Circuit In and For Miami-Dade County, Florida, Juvenile Division* at 3. The juvenile court made no indication that its finding of the non-viability of family reunification would expire on the applicant's 18<sup>th</sup> birthday, or at any time prior to his 22<sup>nd</sup> birthday. Nor does the record reflect that the juvenile court has issued a subsequent order amending its findings. Thus, by the juvenile court retaining jurisdiction "for the welfare of [the applicant]," the applicant remains dependent upon the court and the determination of the non-viability of family reunification remains effective. *Order from the Circuit Court of the Eleventh Judicial Circuit In and For Miami-Dade County, Florida, Juvenile Division* at 3.

Based on the foregoing, the applicant "continues to be dependent upon the juvenile court and eligible for long-term foster care," as contemplated by the regulations at 8 C.F.R. sections 204.11(a) and (c)(5). The AAO finds that the applicant has established that he 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 district 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 shown eligibility for the benefit sought. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.