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FILE:  Office: BOSTON

Date: **NOV 21 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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Boston, 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 19-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 District Director found that the applicant failed to show that he continues to be dependent on a juvenile court and eligible for long-term foster care in the State of Massachusetts, as required by 8 C.F.R. § 204.11(c)(5). The petition was denied accordingly.

On appeal, counsel for the applicant contends that the June 23, 2006 order of the Commonwealth of Massachusetts Trial Court, Probate and Family Court Department, Middlesex Division (“juvenile court”) establishes that the applicant is eligible for long-term foster care under the laws of the Massachusetts, and the District Director lacks authority to challenge this finding. *Brief in Support of Appeal*, at 6-8, dated October 1, 2007. Counsel contends that the juvenile court maintained jurisdiction over the applicant beyond his eighteenth birthday pursuant to its equity powers. *Id.* at 8. Counsel contends that the District Director’s decision constitutes a change in USCIS policy without notice, and that the District Director is estopped from applying the changed policy in the present matter. *Id.* at 12-13. Counsel further asserts that the decision of the District Director is based on an erroneous interpretation of section 101(a)(27)(J) of the Act and related regulations. *Id.* at 13-14.

The record contains, in pertinent part, a brief from counsel; a copy of an order from the juvenile court, dated June 23, 2006; a copy of a motion filed before the juvenile court; an affidavit from an attorney attesting to his prior success with filing SIJ petitions with the USCIS Boston District Office for applicants who reached 18 years of age; documents relating to the placement of the applicant under the care of a guardian, including statements from the applicant’s parents assenting to the termination of their parental rights and the assignment of a guardian; an affidavit from the individual assigned as the applicant’s guardian; a statement from the applicant; a copy of a birth record for the applicant; documentation relating to the applicant’s proceedings in Immigration Court, and; documentation in connection with the applicant’s apprehension upon entry to the United States. The entire record was considered in rendering a decision on the current appeal.

Applicable Law

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.

Facts and Procedure

The record reflects that the applicant was born in Guatemala on August 14, 1988. The applicant resided in extreme poverty with his father, mother, and five siblings. *Statement from the Applicant*, dated May 30, 2006. The applicant left school after sixth grade in order to help his father with odd jobs and to search for food and water. *Id.* at 1. In August 2005, the applicant left his family and traveled to the United States. *Id.* The applicant entered the United States without inspection, and he was apprehended by U.S. Border Patrol agents on or about August 25, 2005. *Form I-213, Record of Deportable/Inadmissible Alien*, dated August 24, 2005.¹ The applicant was released to the custody of his sister-in-law on or about October 3, 2005.

On June 23, 2006, 52 days before the applicant's 18th birthday, the juvenile court issued an order finding that: the applicant was an unmarried ward under the laws of the State of Massachusetts; the applicant was dependent on the court within the meaning of the Act, 8 U.S.C. § 1101(a)(27)(J)(i) and 8 C.F.R. § 204.11(a), (c); the applicant would be placed under the permanent guardianship of his sister-in-law; the applicant was eligible for, and continued to be eligible for, long-term foster care due to abuse, abandonment, or neglect within the meaning of the Act, 8 U.S.C. § 1101(a)(27)(J)(i) and 8 C.F.R. § 204.11(a), (d)(2)(i); reunification of the applicant and his parents was not possible; it was not in the best interest of the applicant to be returned to Guatemala, and; it was in the best interest of the applicant to remain in the United States. *Order of the Juvenile Court*, dated June 23, 2006. The applicant filed the present petition for SIJ status on August 3, 2006, 11 days prior to his 18th birthday. On August 14, 2006, the applicant reached 18 years of age.

The District Director found that the applicant failed to show that he continues to be dependent on a juvenile court and eligible for long-term foster care in the State of Massachusetts, as required by 8 C.F.R. § 204.11(c)(5). The District Director stated that “[w]ith a few limited exceptions; a child is no longer dependent upon the juvenile court in Massachusetts upon reaching the age of majority, determined to be age 18.” *Decision of the District Director* at 4, dated August 1, 2007. Thus, the District Director found that the applicant was no longer dependent on the juvenile court once he reached age 18. The District Director declined to discuss what exceptions exist, or to analyze whether the applicant met any of the referenced exceptions.

¹ The Form I-213, Record of Deportable/Inadmissible Alien, documenting the applicant's apprehension is dated August 24, 2005, yet it reports that the applicant was apprehended on August 25, 2005. It is unclear why the document references an event that occurred one day after the purported execution of the form. However, the dates of the applicant's entry and apprehension have been generally established and are not at issue in the present proceeding.

Counsel's Assertions on Appeal

On appeal, counsel asserts that the District Director lacks authority to interpret the statutory and regulatory provisions that relate to the applicant's eligibility for SIJ status. *Brief in Support of Appeal*, at 2-3. Counsel suggests that the District Director's inquiry should be limited to factual matters, and as the facts in the present proceeding are uncontested, the application should be approved. *Id.*

Counsel contends that the juvenile court's order of June 23, 2006 establishes that the applicant is eligible for long-term foster care under the laws of the Massachusetts, and the District Director lacks authority to challenge this finding. *Id.* at 6-8.

Counsel cites the decision of the Massachusetts Supreme Judicial Court in *Eccleston v. Bankosky*, 438 Mass. 428 (Mass. 2003), to stand for the proposition that, pursuant to M.G.L. ch. 215 § 6, the juvenile court may retain jurisdiction over a child for dependency purposes even though he or she has reached the age of 18. *Brief in Support of Appeal* at 8. Counsel contends that whether the applicant remains under the jurisdiction of the juvenile court is a question for the juvenile court, and the District Director may not properly contest the juvenile court's finding in this regard. *Id.* at 9. Counsel asserts that a juvenile court may exercise its equity jurisdiction in order to continue its jurisdiction over an individual who has reached age 18. *Id.* (citing *Eccleston* at 437.)

Counsel contends that "federal law makes the age inquiry irrelevant until or unless [an applicant] turns 21." *Id.* Counsel adds that "[t]he standard is a bright-line rule that requires no such examination of the individual state's dependency rules." *Id.* at 9-10 (citing 58 Fed. Reg. 42843, 42846).

Counsel contends that no evidence in the record suggests that the abuse, neglect, and abandonment experienced by the applicant has ended. *Id.* at 10. Counsel highlights that the applicant's parents relinquished their parental rights over the applicant, thus the applicant's return to Guatemala is not viable. *Id.* Counsel observes that 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. *Id.* at 10-11. Counsel, contends that the applicant meets the requirement of 8 C.F.R. § 204.11(a) based on the findings in the juvenile court's order. *Id.*

Counsel contends that the District Director's decision constitutes a change in USCIS policy without notice to the public, and the applicant relied on previous policy to his detriment. *Id.* at 12-13. The applicant provides an affidavit from an attorney, [REDACTED] attesting to his prior success with filing SIJ petitions with the USCIS Boston District Office for applicants who reached 18 years of age, encompassing at least 20 cases. *Id.* at 12. Counsel suggests that the District Director should be estopped from applying the allegedly new policy to deny the petition under equity principles. *Id.* at 13. Counsel asserts that, as other applicants similarly situated to the applicant were granted SIJ status "up to late 2006," denying the present petition constitutes a change in the application of the law, practice and/or policy without prior notice and thus constitutes a violation of constitutional notions of fairness as well as due process. *Id.* at 15.

Counsel asserts that the District Director's interpretation of the regulation at 8 C.F.R. § 204.11(c)(5) imposes a requirement on applicants for SIJ status that is not present in the Act. *Id.* at 13. Specifically, counsel states

that the District Director construed 8 C.F.R. § 204.11(c)(5) to impose an age requirement on SIJ status, as an applicant must show that he “continues to be dependent upon the juvenile court and eligible for long-term foster care,” which requires an analysis of age requirements under Massachusetts law that was not intended by Congress. *Id.* at 13-14; 8 C.F.R. § 204.11(c)(5). Yet, counsel points out that section 101(a)(27)(J)(i) of the Act merely requires that an applicant show that he is an individual 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.” *Id.* at 14; section 101(a)(27)(J)(i) of the Act (emphasis added). Counsel asserts that 8 C.F.R. § 204.11(c)(5) conflicts with section 101(a)(27)(J)(i) of the Act, and thus it is invalid. *Brief in Support of Appeal* at 14. Counsel contends that applying the District Director’s interpretation of 8 C.F.R. § 204.11(c)(5) in the present matter is “arbitrary, capricious, or manifestly contrary to the [Act].” *Id.* at 14-15 (referencing *Chevron USA, Inc. v. Natural Resources Council*, 467 U.S. 837, 843-844 (1984)).

Analysis

The primary issue in the present proceeding is whether the applicant has shown that he meets the requirements of section 101(a)(27)(J)(i) of the Act and the regulation at 8 C.F.R. § 204.11(c)(5).

As a preliminary matter, counsel contends that U.S. Citizenship and Immigration Services (USCIS) adjudicators lack the authority to interpret the Act and regulations that relate to eligibility for SIJ status, and that USCIS inquiries should be limited to factual matters. However, established facts in the present matter are only relevant in light of their relation to the requirements of section 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11. It is fundamental that USCIS adjudicators must interpret section 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11 in order to determine if facts shown by the applicant meet the requirements for SIJ status. Where ambiguities exist in the law, USCIS adjudicators must apply legal analysis to ascertain the requirements of SIJ status as intended by Congress. Counsel’s assertion that the District Director improperly engaged in legal analysis is not persuasive.

Counsel asserts that the requirements of 8 C.F.R. § 204.11(c)(5) may not be imposed on the applicant, as 8 C.F.R. § 204.11(c)(5) conflicts with the Act and is therefore invalid. However, the AAO does not find that 8 C.F.R. § 204.11(c)(5) conflicts with the Act such that it may not be applied in the instant case.

The regulation at 8 C.F.R. § 204.11(c)(5) requires that an applicant show that he “continues to be dependent upon the juvenile court” 8 C.F.R. § 204.11(c)(5) (emphasis added). However, no such requirement is explicitly stated in the Act. Section 101(a)(27)(J)(i) of the Act merely requires that an applicant show that he is an individual 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” Section 101(a)(27)(J)(i) of the Act (emphasis added). Counsel suggests that the Act is satisfied where an applicant establishes that, at some point prior to applying for SIJ status, he has been declared dependent on a juvenile court. Counsel contends that an applicant remains eligible for SIJ status even if he is no longer dependent on a juvenile court.

The AAO acknowledges that the regulations at 8 C.F.R. § 204.11(c)(3) and (5) differ from the Act with respect to the requirement that an applicant show dependency on a juvenile court. As quoted above, section 101(a)(27)(J) of the Act requires that an applicant show that she is an individual 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” Section 101(a)(27)(J)(i) of the Act (emphasis added). Thus, section 101(a)(27)(J)(i) of the Act may be satisfied by showing that a juvenile court has legally committed the applicant to, or placed the applicant under the custody of, an agency or department of a State, without the need to show that the applicant has been declared dependent on a juvenile court. *Id.* The regulations at 8 C.F.R. § 204.11(c)(3) and (5) require that an applicant has been declared dependent upon a juvenile court, and that he continues to be so dependent, without providing for the alternatives found in section 101(a)(27)(J)(i) of the Act of showing that a juvenile court has legally committed him to, or placed him under the custody of, an agency or department of a State.

Regulations are enacted to govern the application of statutes according to the intent of Congress. Where requirements found in a statute conflict with those in a regulation, the requirements of the statute trump the regulation. Thus, while the regulations at 8 C.F.R. § 204.11(c)(3) and (5) indicate that an applicant must be declared dependent and continue to be dependent upon a juvenile court, the AAO must give effect to the alternative requirements of section 101(a)(27)(J)(i) of the Act. Accordingly, where an applicant has shown that a juvenile court has legally committed him to, or placed him under the custody of, an agency or department of a State, and he continues to maintain that status, he is not also required to establish that he has been declared dependent, and that he continues to be dependent, on a juvenile court. *See* section 101(a)(27)(J)(i) of the Act.

However, counsel’s assertion that the requirements of 8 C.F.R. § 204.11(c)(5) should be invalidated in total is not persuasive. The construction of 8 C.F.R. § 204.11(c)(5) serves to require that an applicant continue to be dependent on a juvenile court or to need State-managed assistance at the time of adjudication of the petition for SIJ status. Essentially, 8 C.F.R. § 204.11(c)(5) requires that the conditions described in section 101(a)(27)(J)(i) of the Act continue at the time of adjudication. Special immigrant juvenile status was created to offer relief to children who are victims of abuse, neglect, or abandonment, not merely as a means to lawful permanent resident status. *See, e.g.*, H.R. Rep. No. 105-405, at 130 (1997). It is a reasonable interpretation of Congressional intent in creating the SIJ program that an applicant should continue to be dependent upon a juvenile court or to require State-managed assistance at the time of adjudication of the petition for SIJ status. *Id.* If such a requirement was not imposed, one can envision factual scenarios that would contravene the spirit of protection embodied in the SIJ program. For example, an abused child placed into foster care at an early age may meet all requirements for SIJ status at that time. Yet, changed circumstances may result in successful reunification of the child with his parents. Under counsel’s interpretation of the Act, such child would continue to be eligible for SIJ status based on his prior status as a child in need of State assistance, despite the fact that he no longer requires such assistance. The AAO does not find such an interpretation to be congruent with Congressional intent in enacting the SIJ provisions of the Act. *See, e.g.*, H.R. Rep. No. 105-405, at 130 (1997).

It is further noted that 8 C.F.R. § 204.11(c) contains other requirements that are not explicitly stated in the Act. For example, 8 C.F.R. § 204.11(c)(1) requires that an applicant be under twenty-one years of age. While such a requirement does not appear in the Act, it is a reasonable interpretation of Congressional intent

to limit special immigrant juvenile status to those under a certain age. Thus, the fact that 8 C.F.R. § 204.11(c) includes requirements that are not explicitly stated in the Act does not render the provisions of 8 C.F.R. § 204.11(c) in conflict with the Act or invalid.

Counsel's argument is, in essence, that 8 C.F.R. § 204.11(c)(5) is *ultra vires* in nature because it imposes requirements that impermissibly go beyond what is authorized by the statute, and consequently, USCIS should be foreclosed from applying the regulation to the applicant's case. However, in *Matter of Hernandez-Puente*, the Board of Immigration Appeals (BIA) found that it was not the province of the BIA or immigration judges to pass upon the validity of the regulations and statutes that they administer. *Matter of Hernandez-Puente*, 20 I&N Dec. 335 (BIA 1991) (citing *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Valdovinos*, 18 I&N Dec. 343 (BIA 1982); *Matter of Bogart*, 15 I&N Dec. 552 (BIA 1975, 1976; A.G. 1976); *Matter of Chavarri-Alva*, 14 I&N Dec. 298 (BIA 1973)). Similarly, the AAO is an entity, which, deriving its authority from the statute and regulations, lacks the authority to invalidate or ignore the statutory provisions and regulations that it administers.

Based on the foregoing, in order to establish that he is eligible for SIJ status, the applicant must show that he is an individual "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." Section 101(a)(27)(J)(i) of the Act. In accord with congressional intent, as reflected in 8 C.F.R. § 204.11(c)(5), the applicant must show that the conditions described in section 101(a)(27)(J)(i) of the Act continue as of the time that the petition for SIJ status is adjudicated.

The record clearly shows that, on June 23, 2006, the applicant was deemed dependent on the juvenile court and eligible for long-term foster care in the State of Massachusetts. *Order of the Juvenile Court*, dated June 23, 2006. However, the applicant reached 18 years of age 21 days later on August 14, 2006. Counsel contends that the juvenile court retained jurisdiction over the applicant beyond his 18th birthday, thus he remains dependent on the juvenile court and in compliance with 8 C.F.R. § 204.11(c)(5). Yet, neither the court order, nor the record, support a finding that the juvenile court maintained jurisdiction over the applicant beyond his eighteenth birthday, or that it had legal authority to do so under Massachusetts law.

In its order, the juvenile court did not provide a termination date for the order, or address whether it intended for its jurisdiction to extend beyond the applicant's eighteenth birthday. The juvenile court cited M.G.L. ch. 201 §§ 1, 2 to support that it has jurisdiction over "juveniles," yet it did not cite a provision of law that supports that it may retain jurisdiction over an individual beyond his eighteenth birthday.² *Order of the Juvenile Court* at 1. As the applicant was age 17 at the time the court issued its order, the juvenile court's exercise of jurisdiction does not establish that the court intended to retain jurisdiction over the applicant past

² Juvenile court jurisdiction in the State of Massachusetts ends upon a child attaining the age of 18. See M.G.L. ch. 119 § 24 (setting forth procedure to commit a child under the age of 18 to custody or other disposition). However, the AAO recognizes that some exceptions exist regarding criminal actions against a juvenile. See M.G.L. ch. 119 § 72. Yet, as the present matter does not involve criminal proceedings against the applicant, the extension of juvenile court jurisdiction provided in M.G.L. ch. 119 § 72 does not apply.

his eighteenth birthday, at such time that he would reach the age of majority under Massachusetts law. M.G.L. ch. 4 § 7 (defining “age of majority”); M.G.L. ch. 231 § 85P (defining “age of majority”). It is noted that Massachusetts law provides that a guardianship terminates when a child reaches age 18, thus the juvenile court’s order of the applicant’s sister-in-law as his guardian expired by operation of law on the applicant’s eighteenth birthday. *See* M.G.L. ch. 201 § 4.

Counsel suggests that, pursuant to M.G.L. ch. 215 § 6, the juvenile court was authorized to retain jurisdiction over the applicant for dependency purposes even though he reached the age of 18. Counsel bases this assertion on the decision of the Massachusetts Supreme Judicial Court in *Eccleston v. Bankosky*, 438 Mass. 428 (Mass. 2003).

Massachusetts General Laws Chapter 215 § 6 defines the jurisdiction of the juvenile court (probate court) that deemed the applicant dependent upon the court and eligible for long-term foster care. M.G.L. ch. 215 § 6 states, in pertinent part, “Probate courts shall . . . have jurisdiction concurrent with the supreme judicial and superior courts, of all cases and matters in which equitable relief is sought relative to . . . (vi) all matters relative to guardianship or conservatorship.” While M.G.L. ch. 215 § 6 gives the juvenile court jurisdiction over the applicant’s guardianship, it is silent on whether the court may retain jurisdiction over the applicant past age 18, or whether orders issued by the juvenile court relative to the applicant’s guardianship remain in effect beyond the applicant’s eighteenth birthday by operation of law.

In *Eccleston*, a child’s guardian filed a complaint against the child’s father, approximately one month prior to the child’s eighteenth birthday, requesting that a Family and Probate Court order the father to pay child support beyond the child’s eighteenth birthday. The Massachusetts Supreme Judicial Court found that the Probate and Family Court judge lacked authority under M.G.L. ch. 201 § 40 to order the father to pay postminority support to his daughter’s former guardian after the daughter turned 18 years old, because the “guardianship of a minor must end when the minor attains the age of eighteen years, . . . [and t]he statutory reference to an actual age precludes judicial discretion.” *Eccleston*, 438 Mass. at 433 (internal quotation marks and citation omitted). However, the court held that the Probate and Family Court judge had authority pursuant to equity powers under M.G.L. ch. 215 § 6 to order a father to pay child support for his daughter beyond her eighteenth birthday. *See Eccleston* 438 Mass. at 439-40. The Court discussed the concept of emancipation under Massachusetts law, and indicated that a parent’s obligation to his child does not automatically terminate upon a child’s reaching the age of majority. *Id.* at 434. The Massachusetts Supreme Judicial Court stated that the facts of each case must be considered to determine if emancipation has occurred, and that a parent may be ordered to pay child support for a child who is found to be “unemancipated.” *Id.* at 434, 437.³

³ The Court further noted that Massachusetts has “enacted laws to ensure that children who have ‘aged out’ of foster care on reaching the age of eighteen years receive postminority support to enable them to pursue opportunities for education, rehabilitation, and training. *See* [M.G.L. ch.] 119, § 23 (Department of Social Services may retain responsibility for former foster child to age twenty-one years, with person’s agreement, ‘for the purposes of specific educational or rehabilitative programs’).” *Eccleston*, 438 Mass. at 436. However, there is no contention that this provision is applicable to these proceedings.

Although the *Eccleston* court held that “the equity powers granted to Probate and Family Court judges in M.G.L.A. Chapter 215, § 6, are broad enough to permit a judge to impose a postminority support order on the child’s financially able noncustodial parent or parents,” *id.* at 437, it is not clear that the court’s general equity jurisdiction could extend to continued court dependency outside of the child support context. Moreover, in the present matter, the record contains no indication that the juvenile court ordered or intended that its jurisdiction over the applicant should continue after the applicant reached the age of majority, by law or by equity. The AAO makes no finding regarding whether the juvenile court would have had authority to continue its jurisdiction over the applicant beyond his eighteenth birthday for the purpose of maintaining his dependency upon the juvenile court. In the absence of such an affirmative order or action by the juvenile court, the applicant has not established that the juvenile court’s jurisdiction continues, such that the applicant remains dependent upon the juvenile court.

As discussed above, as an alternative to showing continued dependency on the juvenile court, the applicant may show that a court has legally committed him to, or placed him under the custody of, an agency or department of a State. Section 101(a)(27)(J)(i) of the Act. The record does not reflect that the applicant is legally committed to, or under the custody of, an agency or department of the State of Massachusetts. *Id.*

Counsel contends that “federal law makes the age inquiry irrelevant until or unless [an applicant] turns 21,” and that “[t]he standard is a bright-line rule that requires no such examination of the individual state’s dependency rules.” *Brief in Support of Appeal* at 9-10 (citing 58 Fed. Reg. 42843, 42846). However, as shown above, an applicant’s age prior to 21 is relevant to determining whether the applicant continues to meet State requirements as contemplated by section 101(a)(27)(J)(i) of the Act. While 8 C.F.R. § 204.11(c)(1) requires that an applicant show that he is under age 21, it does not remove the relevance of age in determining whether the applicant meets the remaining requirements for SIJ status.

Based on the foregoing, the applicant has not shown that he is dependent on a juvenile court, or that he is legally committed to, or under the custody of, an agency or department of the State of Massachusetts. Section 101(a)(27)(J)(i) of the Act. For this reason, the applicant has not established that he is eligible for SIJ status. *Id.*

Counsel contends that the District Director’s decision constitutes a change in USCIS policy without notice to the public, and that the applicant relied on previous policy to his detriment. However, the applicant has not submitted any examples of specific petitions that were granted based on the same or similar facts as the present matter. The applicant provides an affidavit from an attorney, [REDACTED] in which [REDACTED] attested to his prior success with filing SIJ petitions with the USCIS Boston District Office for applicants who reached 18 years of age, encompassing at least 20 cases. Yet, [REDACTED] did not describe the facts of any of the referenced successful cases such that the AAO can compare them to the present matter. Notably, [REDACTED] did not state whether the applicants in his prior cases remained dependent on a juvenile court, or legally committed to, or under the custody of, an agency or department of the State of Massachusetts in order to satisfy section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(5).

Counsel suggests that the District Director should be estopped from applying the new policy to deny the petition under equity principles. It is noted that the applicant obtained the order from the juvenile court on June 23, 2006, approximately 10 months after his arrival in the United States and 52 days prior to his 18th

birthday. The applicant filed the present SIJ petition on August 3, 2006, 41 days after he received the juvenile court's order and 11 days prior to his 18th birthday. The applicant has not shown that, but for his reliance on a former USCIS policy, he would have taken available measures to secure the juvenile court order and file his SIJ petition sooner. Thus, the applicant has not shown that his reliance on former USCIS policy caused him to delay in pursuing SIJ status, such that his reliance caused him to age out of eligibility.

Further, even had the applicant established that his reliance on a prior USCIS Boston District Office SIJ policy caused him to age out of eligibility for SIJ status, the AAO would lack authority to apply the doctrine of equitable estoppel to approve the petition. The BIA's decision in *Matter of Hernandez-Puente* addressed the doctrine of equitable estoppel.⁴ As noted by the BIA, the United States Supreme Court has opened the possibility that equitable estoppel might be applied against the government based upon the actions of its agents in situations where it is found that those agents engaged in "affirmative misconduct." See *INS v. Hibi*, 414 U.S. 5 (1973); *Montana v. Kennedy*, 366 U.S. 308 (1961). However, it has not specifically ruled that affirmative misconduct would be sufficient to prevent the government from enforcing the immigration laws. *INS v. Miranda*, 459 U.S. 14 (1982); see also *Matter of Tuakoi*, 19 I&N Dec. 341 (BIA 1985); *Matter of M/V "Solemn Judge,"* 18 I&N Dec. 186 (BIA 1982). It is observed that some federal courts have found affirmative misconduct in certain situations and have imposed the doctrine of equitable estoppel against the government. See, e.g., *Corniel-Rodriguez v. INS*, 532 F.2d 301 (2d Cir. 1976). Yet, the question of whether a federal court may apply the doctrine of equitable estoppel against the government is different from whether the AAO has the authority to apply the doctrine in this, or any other case. That question was answered in the negative by the BIA, which assessed its own equitable estoppel authority as follows:

[A]lthough the Fifth Circuit may have accepted the availability of estoppel against the Service, the Board itself and the immigration judges are without authority to apply the doctrine of equitable estoppel against the Service so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation. Equitable estoppel is a judicially devised doctrine that precludes a party to a lawsuit, because of some improper conduct on that party's part, from asserting a claim or a defense, regardless of its substantive validity. *M.D. Phelps v. Fed. Emergency Management Agency*, 785 F.2d 13 (1st Cir. 1986). Estoppel is an equitable form of action and only equitable rights are recognized. *Keado v. United States*, 853 F.2d 1209 (5th Cir. 1988). By contrast, this Board, in considering and determining cases before it, can only exercise such discretion and authority conferred upon the Attorney General by law. 8 C.F.R. § 3.1(d)(1) (1991). Our jurisdiction is defined by the regulations and we have no jurisdiction unless it is affirmatively granted by the regulations. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985); *Matter of Zaidan*, 19 I&N Dec. 297 (BIA 1985).

Matter of Hernandez-Puente, *supra* at 338-39.

⁴ The AAO notes that although *Matter of Hernandez-Puente* did not involve an SIJ petition, it involved a similar factual scenario of an individual who aged out of eligibility for derivative status. Additionally, the facts involved the agency's failure to adjudicate the petition over a period of at least two years, during which time the beneficiary's family purportedly made numerous inquiries and received various assurances.

The AAO finds that it likewise derives its authority from the regulations and lacks authority to apply a remedy not explicitly granted by the regulations. Moreover, even if it were determined that the AAO had such authority, as discussed above the facts in the instant case do not lend themselves to a finding of affirmative misconduct by the District Director, or detrimental reliance by the applicant upon a changed policy.

The AAO further notes that if the District Director discovers that a provision of the Act or regulations has been misapplied in prior matters, it is his or her duty to ensure that such provision is correctly applied in all future matters. Prior errors do not serve as binding precedent, irrespective of an applicant's reliance on the previous misapplication of the Act or regulations. *Sussex Eng'g. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The AAO acknowledges counsel's correct observation that 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 eligibility for long-term foster care components of 8 C.F.R. §§ 204.11(c)(4) and (5) may be met by showing that a juvenile court has deemed that reunifying an applicant with his family is no longer viable, and that such non-viability continues. The AAO further acknowledges that the record reflects that reunifying the applicant with his parents remains not a viable option. However, the applicant has not established that he is otherwise eligible for SIJ status, as discussed above.

Conclusion

Based on the foregoing, the applicant has not shown that he is dependent on a juvenile court, or that he is legally committed to, or under the custody of, an agency or department of the State of Massachusetts. Section 101(a)(27)(J)(i) of the Act. Nor has the applicant established that the AAO has the authority to apply the doctrine of equitable estoppel in the present matter, or that if such authority existed, it would be warranted based on the current facts. Accordingly, the applicant has not established that he is eligible for SIJ status.

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.