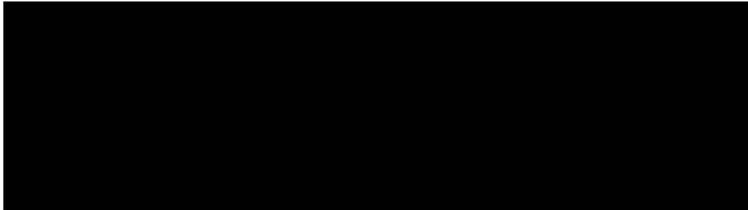


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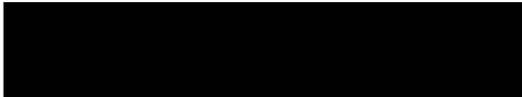
06

FILE: [Redacted]

Office: BALTIMORE

Date: JUN 30 2006

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, Baltimore, 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 twenty-one-year-old native and citizen of Peru 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 issued a decision on April 29, 2005 denying the petition for special immigrant juvenile (SIJ) status. Specifically, the district director found that the applicant failed to submit sufficient documentation to support that the Department of Homeland Security (DHS) should consent to her dependency order 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 there is insufficient basis for the district director to challenge the dependency order of the Circuit Court for Montgomery County, Maryland, sitting as a Juvenile Court ("juvenile court"), and the petition should be approved. *Brief in Support of Appeal*, dated May 31, 2005.

The record contains a brief from counsel in support of the appeal; an order from the juvenile court regarding the applicant's eligibility for special immigrant juvenile status; documentation submitted to the juvenile court by the Montgomery County Department of Health and Human Services – Child Welfare Services of the State of Maryland; evidence that the applicant was placed into foster care, and; copies of the birth certificates for the applicant and her son. 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

On October 20, 2000, the juvenile court issued an order finding that: the applicant is dependent on the juvenile court; the applicant is a child in need of assistance; the applicant is eligible for long-term foster care; it is not in the applicant's best interest to return to Peru, and; the applicant has been abused or neglected. The record contains documentation that was under consideration by the juvenile court that describes the applicant's history and the conditions that led to her placement into foster care. Specifically, in Peru the applicant's mother placed the applicant under the care of [REDACTED] who employed the applicant as a domestic servant and nanny for two children. *Child Information Sheet, State of Maryland Case Plan for Children in Out-of-Home*, dated September 21, 1999. The applicant's mother received payments for the applicant's labor. *Id.* [REDACTED] transported the applicant to the United States in 1999. *Id.* [REDACTED] was physically abusive to the applicant, and threatened to return her to Peru when she found the applicant's work unsatisfactory. *Id.* [REDACTED] failed to enroll the applicant in school, and on at least one occasion left the applicant alone to care for two young children for a two week period. *Id.* Maryland Child Welfare Services ("CWS") contacted the applicant's mother in Peru, yet she "expressed little concern when staff explained the circumstances of CWS involvement." *Id.* The applicant does not remember her father's name, and she has no knowledge of his whereabouts. *Id.* The applicant provided CWS with contact information for her uncle in Peru, yet upon attempting to contact him, CWS was informed that he was not at the number given. *Id.*

On June 6, 2002, the applicant filed a Form I-360 petition requesting special immigrant juvenile status. Upon considering the included evidence, the district director determined that the applicant failed to show that she was abused, neglected, or abandoned by her parents, or that the juvenile court made a determination that family reunification is not viable in her case. *Decision of the District Director*, dated April 29, 2005. Thus, the district director found that the applicant failed to submit sufficient documentation to support that the Department of Homeland Security (DHS) should consent to her dependency order 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 contends that there is insufficient basis for the district director to challenge the dependency order of the juvenile court. *Brief in Support of Appeal*, dated May 31, 2005. Counsel explains that the juvenile court considered a petition and report filed by CWS, and that CWS, in accordance with Maryland rules, conducted an investigation into the applicant's background and particular situation. *Id.* at 3. Counsel notes that the juvenile court's decision was based on CWS's investigation and applicable Maryland law. *Id.* 3-4. Counsel asserts that Citizenship and Immigration Services (CIS) "cannot assert that it disagrees with Maryland's definitions of applicable terms, nor can it impose a federal definition of abuse, neglect, or best interests of the child." *Id.* at 4. Counsel contends that the district director's decision is not in compliance with CIS policy, as presented in memoranda from Thomas E. Cook, Acting Assistant Commissioner, Adjudications Division, Immigration and Naturalization Service of July 9, 1999 regarding Special Immigrant Juveniles. *Id.*

Upon review, the applicant has established that the juvenile court's dependency order 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 Homeland Security 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 (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 her best interest to be returned to her country of nationality, without sufficient documentation 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 submitting sufficient documentation to satisfy 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 contains sufficient documentation to support the dependency order of the juvenile court. CWS conducted a detailed investigation into the applicant's background and circumstances, and uncovered facts to support that the applicant was effectively abandoned by her mother in Peru. The applicant's mother relinquished control over the applicant while the applicant was at a young age, she accepted payments for the applicant's services while not providing for the applicant, and she expressed little interest in the applicant's welfare when contacted by CWS and advised of the applicant's situation. The record shows that the applicant was directly physically and emotionally abused by her employer. While such abuse was not perpetrated by the applicant's mother, the record shows that the applicant's mother was apprised of the applicant's situation yet failed to express concern or an interest in taking the applicant back under her guardianship. Contrary to the director's finding, the record shows that the juvenile court had sufficient evidence to support its finding that the applicant has been abandoned by her mother.

The district director stated that the applicant "failed to demonstrate that the [juvenile] court made a determination that family reunification was not a viable option in [the applicant's] case." *Decision of the District Director* at 4. However, such language or specific requirement does not appear in the Act or implementing regulations. Pursuant to 8 C.F.R. § 204.11(c)(7), the applicant must show that the juvenile court determined that it "would not be in [her] best interest to be returned to the country of nationality or last habitual residence of [her] . . . or her parent or parents." The juvenile court made precisely this finding based on the evidence before it. Thus, the applicant has satisfied the requirement of 8 C.F.R. § 204.11(c)(7).

Based on the foregoing, the applicant has established the basis for the juvenile court's order of October 20, 2000, such that the Secretary of Homeland Security is inclined to consent to the order serving as a precondition to the grant of special immigrant juvenile status. *See* section 101(a)(27)(J)(iii) of the Act.

However, the applicant is no longer eligible for special immigrant juvenile status under section 101(a)(27)(J) of the Act, as she is no longer under the age of 21. *See* 8 C.F.R. § 204.11(c)(1). The applicant reached age 21 on October 10, 2005. CIS lacks discretion to waive the requirement of 8 C.F.R. § 204.11(c)(1). For this reason, the petition may not be approved.

It is unfortunate that the applicant has become ineligible for special immigrant juvenile status due to having "aged-out," and the AAO is particularly sympathetic to the applicant's situation given the unfortunate circumstances that led her to seek SIJ status. However, the record does not show that the applicant's age-out was attributable to affirmative misconduct or negligent delay by CIS. It is noted that the juvenile court issued its dependency order on October 20, 2000, with an instruction that "an application is to be made to the Immigration and Naturalization Service pursuant to 8 U.S.C. 1101(a)(27)(J)." Yet, the applicant or her representative did not file her Form I-360 application for SIJ status until June 6, 2002, over 19 months after

the court order. Ample opportunity existed for the application to be completed and submitted within a period of time that would allow for an adjudication and subsequent appeal.

Thus, the applicant has failed to establish eligibility for special immigrant juvenile status under section 101(a)(27)(J) of the Act.

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.