

Matter of Jose A. Menjivar
A70117167, TEXAS SERVICE CENTER
Administrative Appeals Office
29 Immig. Rptr. B2-37
AAO Designation: N/A
Dec. 27, 1994

Editorial information: index

Index: Special immigrants (juveniles)

Editorial information: headnote**HOLDING**

The AAO sustained petitioner's appeal, granting classification of the beneficiary as a special immigrant juvenile under INA § 203(b)(4), upon finding that the beneficiary was dependent upon the juvenile court as the court's appointment of a guardian for the juvenile was analogous to placement in foster care as contemplated by the statute.

Editorial information: summary**SUMMARY OF ISSUES**

SPECIAL IMMIGRANTS: A special immigrant juvenile visa petition pursuant to INA § 203(b)(4) will be approved where a juvenile court appointed a guardian for the beneficiary, as same is analogous to placement in foster care, and the court specifically found that it would not be in the beneficiary's best interest to be returned to his country of nationality.

Editorial information: syllabus**FACTS**

Petitioner sought classification of the beneficiary pursuant to § 203(b)(4) of the INA as a special immigrant juvenile. The beneficiary, a native of El Salvador, entered the U.S. without inspection on June 24, 1993. A juvenile court did not place the juvenile in foster care but did appoint the juvenile's uncle as guardian for the juvenile. The juvenile court also found that it would not be in the juvenile's best interest to be returned to El Salvador. The Texas director denied the petition upon finding that, in light of the guardianship, the beneficiary was not dependent upon a juvenile court. Petitioner appealed.

Editorial information: cross-ref**CROSS-REFERENCES**

Immigration Law and Procedure chap. 35.

Counsel

COUNSEL: ON BEHALF OF PETITIONER:
Paul S. Zoltan

Judges

FOR THE ASSOCIATE COMMISSIONER, EXAMINATIONS
Terrance M. O'Reilly, Director, Administrative Appeals Office

Opinion

Opinion by

O'Reilly, Director, Administrative Appeals Office

Opinion

DISCUSSION: The preference visa petition was denied by the district director, Dallas Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner seeks classification as a special immigrant juvenile pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act). 8 U.S.C. 1153(b)(4). The district director determined that the petitioner had not established that the beneficiary had been declared dependent on a juvenile court located in the United States.

On appeal, counsel argues that the petition should be approved because the beneficiary has been declared dependent on a juvenile court in the United States.

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, 8 U.S.C. 1101(a)(27)(J), which pertains to:

an immigrant (i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court of long-term foster care, and (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; except that 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.

8 C.F.R. 204.11(a) states, in pertinent part, that:

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.

8 C.F.R. 204.11(c) states that:

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 of 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; or
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- (7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

The district director stated in the notice of intent to deny the petition that the beneficiary did not qualify as a special immigrant juvenile because the court had appointed the petitioner, who is the beneficiary's uncle, as the beneficiary's sole managing conservator, and had stated that no other court had jurisdiction of the beneficiary's case. In the decision to deny the petition, the district director stated that the petitioner had not established that the beneficiary meets the requirements of 8 C.F.R. 204.11(c)(3), (5), and (7).

It is noted that the language of the regulations requires that the beneficiary meet either 8 C.F.R. 204.11(c)(6) or (7). The beneficiary clearly was not dependent on a juvenile court located in the United States on November 29, 1990, because he last entered the United States without inspection on June 24, 1993. Although the district director's observation that the beneficiary does not meet the requirements of 8 C.F.R. 204.11(c)(7) is correct, it is clear that the beneficiary meets the requirements of 8 C.F.R. 204.11(c)(6). The court decree in this matter specifically states that it is not in the beneficiary's best interest to return to his native country of El Salvador.

From the language of the district director's decision, it appears that the district director based his determination that the beneficiary had not been declared dependent upon a juvenile court on the fact that the court had appointed a guardian for the beneficiary. The court's placement of the beneficiary in a guardianship situation does not preclude a finding that the beneficiary is dependent upon the juvenile court. The director noted that the record contained an affidavit from one of the attorneys who drafted the Texas Family Law Code, which states that when a family court decree designates a nonparent as a managing conservator over a minor child whose parents have relinquished their parental rights, this situation is analogous to that described by the term "dependent upon a juvenile court."

As noted by counsel on appeal, there is no requirement that the State court decree contain the specific statement that the beneficiary is dependent upon the court. The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child's parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care or, as here, in a guardianship situation. The parental rights retained by the beneficiary's father in El Salvador are extremely limited, and the court's naming of the beneficiary's father as possessory conservator does not preclude a finding that the beneficiary is dependent upon the juvenile court.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.

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