



U.S. Citizenship
and Immigration
Services

JOSE ALBERTO GALDAMEZ
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MIAMI, FL 33169

FILE: A97 905 366 Office: MIAMI DISTRICT OFFICE Date: JUN 19 2006

IN RE: Petitioner: JOSE ALBERTO GALDAMEZ

PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described in Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J).

ON BEHALF OF PETITIONER:

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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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Miami, FL approved the petition to classify status as a Special Immigrant Juvenile (Form I-360) and then certified the decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

The petitioner is an 18-year-old native and citizen of Honduras. He seeks classification as a special immigrant juvenile pursuant to section 101(a)(27)(J) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1101(a)(27)(J).

The district director found that under Florida statute, the petitioner qualified for special immigrant juvenile status. The matter was certified because it was a case of first impression involving a statute that the director believed was amended solely to allow individuals who were over the age of 18 to gain permanent residence through the Special Immigrant Juvenile petition.

The record includes Form I-360, Petition for Special Immigrant Juvenile, submitted to USCIS on September 22, 2005. Included with the petition are copies of the petitioner's birth certificate indicating that he was born on December 1, 1987, a "Best Interest Order" issued by the Circuit Court of the Eleventh Judicial Circuit, Dade County Florida-Juvenile Division dated August 8, 2005, and an Order for Extension of Jurisdiction, extending jurisdiction of the court until the petitioner's nineteenth birthday dated August 30, 2005. Counsel submitted a brief in response to certification.

INA § 203(b)(4), 8 U.S.C. § 1153, provides classification to qualified special immigrant juveniles as described in INA § 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J). Section 101(a)(27)(J) of the Act defines a "special immigrant juvenile" as 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 expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status

8 C.F.R. § 204.11(a) and (c), state, in pertinent part that:

a) [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.

(c) [A]n 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

This case arises as a result of a 2005 amendment to the Florida child welfare laws, which allows Florida juvenile courts to retain jurisdiction over certain non-citizens after they reach age 18. The petitioner turned eighteen on December 1, 2005. The key issue in this matter is whether, under the amended Florida child welfare statute, the petitioner meets the regulatory requirements for eligibility for a special immigrant visa as indicated in the section of the regulations found above.

Fla. Stat. Title V. Chapter 39.013(2) provides in pertinent part:

...When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. However, if a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Scholarship, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday. 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....

Fla Stat. Title 5 § 39.5075 provides in pertinent part:

....

(2) Whenever a child is adjudicated dependent, the department of community-based care provider shall determine whether the child is a citizen of the United States. The department or community-based care provider shall report to the court in its first judicial review concerning the child whether the child is a citizen of the United States and, if not, the steps that have been taken to address the citizenship or residency status of the child. Services to children alleged to have been abused, neglected or abandoned must be provided without regard to the citizenship of the child except where alienage or immigration status is explicitly set forth as a statutory condition of coverage or eligibility.

(3) If the child is not a citizen, the department or community-based care provider shall include in the case plan developed for the child a recommendation as to whether the permanency plan for the child will include remaining in the United States. If the case plan calls for the child to remain in the United States, and the child is in need of documentation to effectuate this plan, the department or community-based care provider must evaluate the child's case to determine whether the child may be eligible for special immigrant juvenile status.

(4) If the child may be eligible for special immigrant juvenile status, the department or community based care provider shall petition the court for an order finding that the child meets the criteria for special immigrant juvenile status. The ruling of the court on this petition must include findings as to the express wishes of the child, if the child is able to express such wishes, and any other circumstances that would affect whether the best interests of the child would be served by applying for special immigrant juvenile status.

(5) No later than 60 days after an order finding that the child is eligible for special immigrant juvenile status and that applying for this status is in the best interest of the child, the department or community-based care provider shall, directly or through volunteer or contracted legal services, file a petition for special immigrant juvenile status and the application for adjustment of status to the appropriate federal authorities on behalf of the child.

(6) If a petition and application have been filed 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 s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

(7) In any judicial review report provided to the court for a child for whom the court has granted the order described in subsection (4), the court shall be advised of the status of the petition and application process concerning the child....

The district director may have been overstating when he wrote that the sole purpose of the amendment to the Florida statute was to "accommodate the adjustment of status of those individuals past their 18th birthday." *Decision of the Director*, March 14, 2006, p.5. Counsel has persuasively made the case that the Florida Legislature was attempting to protect the welfare of all children in the custody of its courts, including undocumented aliens. Before 2005 undocumented aliens had not been specifically addressed by Florida dependency law and Florida juvenile courts have jurisdiction over a substantial number of undocumented aliens. *Brief in Response to Certification*, pages 12-14. However, in deference to the director, the language in the statute above, especially Fla Stat. Title 5 § 39.5075(6) and (7), makes it possible and facilitates the process for an undocumented child who otherwise meets the special immigrant juvenile requirements, but is over 18, to acquire resident status through the special immigrant juvenile visa process. It would be impermissible if the Florida statute defeated the purpose of federal law. However, given that by regulation the age of disqualification for a special immigrant juvenile visa is twenty-one, that issue is not a concern here. The issue before us is not the intent of the Florida legislature in passing the amendment to the child welfare laws, but whether the extended jurisdiction assumed by the Eleventh Judicial Circuit, Miami and Dade County Florida, Juvenile/Family Division over the petitioner in this case is sufficient to meet federal regulatory requirements concerning the qualifications for special immigrant juvenile status.

There is some question upon reading the statute whether an extension of jurisdiction under the statute is sufficient to meet the federal regulatory requirement that, to qualify for a special immigrant visa, an applicant must be both dependent on the court and eligible for long-term foster care. Stating that 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" is ambiguous as to whether the applicant would continue to be eligible for long-term foster care or to otherwise meet the regulatory requirements found at 8 C.F.R. § 204.11 (see above). Fla. Stat. Title V, Chapter 39.013(2) discusses the jurisdiction the juvenile courts can take over a "formerly dependent child" after that child turns eighteen. Thus, it is not entirely clear from the statute whether the Florida courts have sufficient jurisdiction over individuals who have past their eighteenth birthday to meet the regulatory requirement that to qualify for special immigrant juvenile status, the individual must be both dependent on the court and eligible for long-term foster care. Federal law governs eligibility for a special immigrant visa, regardless of whether a state law is intended to make eligible certain individuals over the age of 18.

While the statute is somewhat ambiguous concerning the nature of the court's jurisdiction over the petitioner's dependency matter, the court with that jurisdiction is much more clear. The record includes copies of a "Best Interest Order" and an "Order Extending Jurisdiction," each signed by a circuit judge of the Eleventh Judicial Circuit, Dade County Florida, Juvenile/Family Division. Together, the two orders indicate that the petitioner has been declared a dependent of the court due to abuse, neglect or abandonment and deemed eligible for long-term foster care (see, *Best Interest Order*), and that he continues to be dependent on the court and eligible for foster care (see, *Order Extending Jurisdiction*). The court also determined that it would not be in petitioner's best interest to be returned to Honduras. See, *Best Interest Order*. It is also noted that the applicant is less than 21 years of age and unmarried. See, *Form G-325A*. The applicant meets the regulatory requirements of 8 C.F.R. § 204.11.

The AAO affirms the decision of the director and finds that the applicant is eligible for special immigrant juvenile status.

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ORDER: The decision of the director is affirmed.