U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

U.S. Citizenship and Immigration Services

To: REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
FIELD OFFICE DIRECTORS
NATIONAL BENEFIT CENTER DIRECTOR

From: Jonathan Scharfen /s/
Deputy Director

Date: July 30, 2007

Re: *Matter of Perez Quintanilla* (June 7, 2007)

As Deputy Director I hereby designate the attached decision of the Administrative Appeals Office (AAO) in *Matter of Perez Quintanilla* as a USCIS Adopted Decision. Accordingly, this decision is binding policy guidance on all USCIS personnel. This AAO decision provides guidance regarding the determination of constructive custody for applicants for special immigrant juvenile status pursuant to section 101(a)(27)(J)(iii)(I) of the Immigration and Nationality Act (the Act,) 8 U.S.C. § 1101(a)(27)(J)(iii)(I). In addition, the decision addresses Florida Statute § 39.013(2) whereby a juvenile court in the State of Florida extends its jurisdiction over an applicant for special immigrant juvenile status beyond his or her 18th birthday allowing the applicant to continue to meet the eligibility criteria for special immigrant juvenile status set forth in 8 C.F.R. § 204.11(c)(5), unless the juvenile court orders otherwise.

USCIS personnel are directed to follow the reasoning in this decision in similar cases.

U.S. Department of Homeland Security
20 Massachusetts Ave., NW
Washington, D.C. 20529

U.S. Citizenship and Immigration Services

FOR PUBLICATION

MATTER OF PEREZ QUINTANILLA

In Special Immigrant Petition Proceedings

A97 383 010

Decided by the Chief, Administrative Appeals Office
June 7, 2007

(1) Pursuant to section 101(a)(27)(J)(iii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(27)(J)(iii)(I), when an applicant for special immigrant juvenile status is in the actual or constructive custody of the Secretary of the Department of Homeland Security, he or she must obtain the Secretary's specific consent to a juvenile court's jurisdiction to determine his or her custody status or placement. For the purpose of determining whether an applicant is in the constructive custody of the Secretary such that specific consent is required, U.S. Citizenship and Immigration Services will look to the current policy and practices of U.S. Immigration and Customs Enforcement.

(2) Pursuant to 8 C.F.R. § 204.11(c)(5), an applicant must continue "to be dependent upon the juvenile court and eligible for long-term foster care" in order to be eligible for special immigrant juvenile status. Eligibility for long-term foster care is defined by regulation to mean "that a determination has been made by the juvenile court that family reunification is no longer a viable option." 8 C.F.R. § 204.11(a). When a juvenile court in the State of Florida extends its jurisdiction over an applicant beyond his or her 18th birthday pursuant to Florida Statute § 39.013(2), and the juvenile court has determined that the applicant is eligible for long-term foster care due to the non-viability of family reunification, the applicant continues to meet the eligibility criteria for special immigrant juvenile status set forth in 8 C.F.R. § 204.11(c)(5), unless the juvenile court orders otherwise.

ON BEHALF OF PETITIONER:

DEBORAH LEE
FLORIDA IMMIGRANT ADVOCACY CENTER, INC.
3000 BISCAYNE BLVD., SUITE 400
MIAMI, FL 33137

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 and citizen of the Nicaragua. 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 the U.S. Department of Homeland Security ("DHS") specifically consented to a juvenile court's jurisdiction to determine his custody status, as provided in section 101(a)(27)(J)(iii)(I) of the Act. The District Director further 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, as permitted by Florida Statute section 39.013(2). The petition was denied accordingly.

On appeal, counsel for the applicant contends that the applicant did not require the specific consent of DHS in order for the juvenile court to take jurisdiction over him. *Statement from Counsel on Form I-290B*, dated December 5, 2006. Counsel further asserts 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). *Id*.

The record contains a statement from counsel on Form I-290B; a brief from counsel; a copy of the applicant's birth certificate; copies of orders from the juvenile court issued on December 3, 2004, December 19, 2005, and September 1, 2006; a copy of a predisposition report from the Florida Department of Children and Families; a copy of the applicant's passport; documents in connection with the applicant's Immigration Court proceedings; statements from the applicant; a statement from the applicant's grandmother; copies of correspondence from counsel to U.S. Immigration and Customs Enforcement (ICE) regarding whether the applicant required specific consent to the juvenile court's jurisdiction, and; copies of two letters from ICE in connection with separate matters regarding whether specific consent is required when an individual has been released from custody but has not received a final order of removal. 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.

See also Fla. Child Welfare Administrative Rule 65C-31.010(1)(b)(2). The first issue in this proceeding is whether the applicant required the specific consent of the Attorney General (now Secretary of DHS) in order for the juvenile court to take jurisdiction over his custody status or placement, pursuant to section 101(a)(27)(J)(iii)(I) of the Act. Section 101(a)(27)(J)(iii)(I) of the Act states that an applicant only needs such specific consent when he is in the actual or constructive custody of DHS.

In the instant matter, the applicant was taken into DHS custody beginning on April 25, 2003 due to his alleged violation of section 212(a)(6)(A)(i) of the Act for being an alien present in the United States without being admitted or paroled, or arriving in the United States at any time or place other than as designated by the Secretary of DHS. He was issued a Notice to Appear and placed into removal proceedings. However, the applicant was released on September 8, 2003 pending the outcome of his removal proceedings. The record does not show that the applicant has been in DHS custody since September 8, 2003.

The applicant did not obtain the Secretary's specific consent to the juvenile court taking jurisdiction over his custody status or placement. On December 19, 2005, the juvenile court issued a Best Interest Order finding that: 1) the applicant is dependent on the court due to abuse, neglect, or abandonment by his parents; 2) the applicant is eligible for long-term foster care, as family reunification is not a viable option; 3) it is not in the applicant's best interest to be returned to Nicaragua, and; 4) the juvenile court will retain jurisdiction to maintain compliance with 8 C.F.R. § 204.11(c)(5). *Order from the Circuit Court of the Eleventh Judicial Circuit In and For*

Miami-Dade County, Florida, Juvenile Division ("Best Interest Order"), dated December 19, 2005. As the juvenile court issued its order after the applicant was released from DHS custody, it is evident that he was not in the actual custody of the Secretary at the time of issuance of the order as contemplated by section 101(a)(27)(J)(iii)(I) of the Act.

The District Director found that the applicant was in the constructive custody of the Secretary due to the fact that he was in removal proceedings at the time that the juvenile court issued the Best Interest Order. *Decision of the District Director* at 4, dated November 6, 2006. The District Director referenced an unpublished AAO decision, and stated that:

> [T]he AAO cited and agreed with the [District Court of Appeal of the State of Florida, Fourth District in *P.G. v. Department of Children and Family Services*, 867 So.2d 1248 (Fla. 4th DCA 2004)] by stating, "the Court of Appeals agreed, finding that because the applicant had been placed into removal proceedings, he was in the constructive custody of the Attorney General, and the juvenile court lacked jurisdiction unless the specific consent of the Attorney General was obtained . . . . The AAO find[s] that pursuant to the applicable statutory and regulatory provisions, and consistent with the ruling of the Florida Court of Appeals, Fourth District, the dependency order issued by the Florida Circuit Court, Eleventh Judicial Circuit may be invalid if there was no specific consent from the Secretary of Homeland Security."

Id. The District Director determined that, in light of the referenced decision of the AAO and the state court's decision in *P.G. v. Department of Children and Family Services*, the juvenile court's Best Interest Order was invalid, as the Secretary did not consent to the juvenile court's jurisdiction over the applicant.

On appeal, counsel contends that the applicant did not require the specific consent of the Secretary in order for the juvenile court to take jurisdiction over him. *Brief from Counsel* at 6-17, submitted February 12, 2007. Counsel asserts that the decision of the District Court of Appeal of the State of Florida, Fourth District in *P.G. v. Department of Children and Family Services* is not controlling in the present matter, as the holding was based on a mistaken legal premise, and it was decided in the Fourth District of the State of Florida while the present matter arises within the jurisdiction of the Third Circuit(should this be District?) of the State of Florida. *Id*. at 13-17. Counsel further asserts that the District Director's reliance on the referenced unpublished AAO decision is misplaced. *Id*. at 7-8. Counsel notes that the quoted language from the AAO decision reflects that the AAO's comments on the necessity of specific consent and the holding in *P.G. v. Department of Children and Family Services* were presented as dicta, and thus did not constitute a basis for the AAO's decision or a definite position on the necessity of specific consent. *Id*.

Counsel also relies on the unpublished decision of the United States Court of Appeals for the Ninth Circuit in *Pena v. Meissner*, 232 F.3d 896 (9th Cir. 2000). *Id*. at 8-9. Counsel explains that the Ninth Circuit held that an individual is in the constructive custody of DHS only when he is subject to a final order of deportation. *Id*. at 9. Counsel contends that, as the applicant was not subject to a final order of removal at the time the juvenile court issued the Best Interest Order, the applicant did not require the Secretary's specific consent to the juvenile court's jurisdiction.

The applicant further submits correspondence from counsel to Immigration and Customs Enforcement (ICE) in which counsel requested written confirmation from ICE to show that the applicant did not require the specific consent of the Secretary in order for the juvenile court to take jurisdiction. *Letter from Counsel*, dated October 23, 2006. While the applicant did not submit a response from ICE , he submitted two letters from ICE regarding similar cases. In one such letter, the deputy assistant director, Office of Detention and Removal, Field Operations of ICE, stated the following:

> In your letter, you stated that the Honorable Judge Bowman requested that you obtain a letter from the Department of Homeland Security, Immigration and Customs Enforcement (ICE), stating that he has jurisdiction in a juvenile dependency matter relating to your client, [name redacted].
>
> As you know, [name redacted] has been released from the custody of the federal government and has not received an order of removal. The current practice within ICE in [name redacted]'s situation is to not require ICE consent before a state juvenile court can exercise jurisdiction to make rulings relevant to a juvenile's pursuit of special immigrant status under the Immigration and Nationality Act, specifically Section 101(a)(27)(j), and the accompanying regulations.

Letter from Deputy Assistant Director, Office of Detention and Removal, Field Operations of ICE, dated January 20, 2004. In the second letter provided by the applicant, the national juvenile coordinator, Office of Detention and Removal, Field Operations Division of ICE, reiterated the statement quoted above. *Letter from the National Juvenile Coordinator, Office of Detention and Removal, Field Operations Division of ICE*, dated January 24, 2005.

Upon review, the applicant has shown that he did not require the Secretary's specific consent to the juvenile court's jurisdiction under section 101(a)(27)(J)(iii)(I) of the Act. Specifically, under current ICE policy and practice, the applicant was not deemed to be in the constructive custody of the Secretary at the time the juvenile court issued its order, as contemplated by section 101(a)(27)(J)(iii)(I) of the Act.

It is noted that the Act and regulations do not provide a definition of "constructive custody." Nor are there any precedent decisions from U.S. courts or the AAO that are binding on the present matter. Thus, the AAO will look to internal policy and the past practice of ICE.

On May 27, 2004, William R. Yates, Associate Director for Operations, Citizenship and Immigration Services ("CIS"), issued guidance to CIS Regional Directors and District Directors to provide policy and procedural clarification on the adjudication of SIJ petitions. *Memorandum #3 - Field Guidance on Special Immigrant Juvenile Status Petitions* ("Yates Memo"), William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, HQADN 70/23 (May 27, 2004). Mr. Yates briefly discussed specific consent as follows:

> The adjudicator must be satisfied that the petitioner obtained specific consent from ICE where necessary. If specific consent was necessary but not timely obtained, a juvenile court dependency order is not valid and the petition must be denied. INA § 101(a)(27)(J)(iii)(I); 8 C.F.R. § 204.11(c)(3). Please check with the local ICE juvenile coordinator who handled the case to determine whether specific consent was required, and if so, whether it was timely granted.

Id. at 5. The record does not reflect whether the District Director consulted ICE regarding whether specific consent was required in the applicant's case. However, the applicant has submitted copies of letters from two different Deputy Assistant Directors of the ICE Office of Detention and Removal, dated January 20, 2004 and January 24, 2005. These letters serve as evidence of ICE's policy on specific consent. As quoted above, when an applicant "has been released from the custody of the federal government and has not received an order of removal . . . [t]he current practice within ICE in [the applicant's] situation is to not require ICE consent before a state juvenile court can exercise jurisdiction to make rulings relevant to a juvenile's pursuit of special immigrant status . . . ." *Letter from Deputy Assistant Director, Office of Detention and Removal, Field Operations of ICE* at 1.

It is noted that the record contains a copy of correspondence from counsel to the National Juvenile Coordination Unit of ICE regarding whether the applicant required specific consent to the juvenile court's jurisdiction. In the letter, counsel referenced a conversation between her and the national juvenile coordinator in which they agreed that specific consent was not required in the applicant's case. *Letter from Counsel to the National Juvenile Coordinator, Office of Detention and Removal, Field Operations Division of ICE*, dated October 23, 2006. Counsel requested either written confirmation that the applicant did not require specific consent, or that ICE issue guidance to the District Director regarding current policy regarding the applicant's case. *Id*. The record does not reflect whether the applicant received correspondence from the national juvenile coordinator as requested, or whether ICE provided guidance to the District Director. However, there is no documentation or indication that ICE policy changed between the January 24, 2005 letter from the national juvenile coordinator and the issuance of the Best Interest Order on December 19, 2005.

Accordingly, the applicant has submitted sufficient evidence to show that he was not deemed by ICE to be in constructive custody at the time the juvenile court issued the Best Interest Order. As the applicant was not in the actual or constructive custody of the Secretary, specific consent was not necessary in order for the juvenile court to properly take jurisdiction over the applicant's custody status and placement. *See Letter from Deputy Assistant Director, Office of Detention and Removal, Field Operations of ICE* at 1; *Letter from to the National Juvenile Coordinator, Office of Detention and Removal, Field Operations Division of ICE* at 1.

As per the May 27, 2004 CIS memorandum from William R. Yates, adjudicators should look to current ICE practice to determine whether specific consent is required for a particular case. *Yates Memo* at 5. ICE, not CIS, considers requests for specific consent to a juvenile court's jurisdiction when necessary. Thus, in the absence of a definition of constructive custody in the Act, regulations, or precedent decisions, ICE policy as of the date of the juvenile court's order determines whether an applicant bears the burden of obtaining the Secretary's specific consent to

the juvenile court's jurisdiction pursuant to section 101(a)(27)(J)(iii)(I) of the Act. *Yates Memo* at 5.

As noted above, the District Director referenced an unpublished AAO decision, and stated that, in the decision, the AAO cited and agreed with the reasoning of the District Court of Appeal of the State of Florida, Fourth District in *P.G. v. Department of Children and Family Services*, 867 So.2d 1248 (Fla. 4th DCA 2004). *Decision of the District Director* at 4. However, as observed by counsel, the AAO discussion of *P.G. v. Department of Children and Family Services* is dicta. The issue of specific consent did not constitute a basis for the AAO's decision in the referenced matter, or a definite position on the necessity of specific consent. Rather than agree with or follow the findings in *P.G. v. Department of Children and Family Services*, the AAO stated that the juvenile court order in the referenced matter *may be* invalid if there was no specific consent from the Secretary of Homeland Security. Further, the decision in *P.G. v. Department of Children and Family Services* was issued by a court of the State of Florida, and thus it does not serve as binding precedent on CIS officers. Accordingly, the AAO does not find that the reasoning or holding in *P.G. v. Department of Children and Family Services* dictates that the applicant required the specific consent of the Secretary pursuant to section 101(a)(27)(J)(iii)(I) of the Act.

Counsel discusses the unpublished decision of the Ninth Circuit in *Pena v. Meissner*, 232 F.3d 896 (9th Cir. 2000). *Brief from Counsel* at 8-9. Counsel explains that the Ninth Circuit held that an individual is in the constructive custody of DHS only when he is subject to a final order of deportation. *Id*. at 9. The reasoning of the Ninth Circuit in *Pena v. Meissner* is consistent with ICE practice at the time the juvenile court issued the Best Interest Order. However, it is noted that the present matter arises within the jurisdiction of the Eleventh Circuit of the United States Court of Appeals, not the Ninth Circuit. Thus, while the decision of the Ninth Circuit in *Pena v. Meissner* is instructive, it does not serve as binding precedent in the instant matter. Additionally, as an unpublished decision, the Ninth Circuit indicated that its disposition in *Pena v. Meissner* "is not appropriate for publication and may not be cited to or by the courts of [the Ninth Judicial Circuit] except as provided by Ninth Circuit Rule 36-3." *Pena v. Meissner*, 232 F.3d at 232. Thus, the Ninth Circuit limited the precedential value of *Pena v. Meissner*, as Ninth Circuit Rule 36-3 states that "[u]npublished dispositions and orders of [the Ninth Circuit] are not precedent, except when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion." *Ninth Circuit Rule 36-3*.

Based on the foregoing, the applicant has established that he did not require the specific consent of the Secretary in order for the juvenile court to properly take jurisdiction over his custody status and placement. Thus, the Best Interest Order is valid and may serve as a basis for SIJ status.

The second 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). As noted above, on December 19, 2005, the juvenile court issued a Best Interest Order finding that: 1) the applicant is dependent on the court due to abuse, neglect, or abandonment by his parents; 2) the applicant is eligible for long-term foster care, as family reunification is not a viable option; 3) it is not in the applicant's best interest to be returned to Nicaragua, and; 4) the juvenile court will retain jurisdiction to preserve compliance with 8 C.F.R. § 204.11(c)(5). The court stated that it

"remains [sic] limited Jurisdiction, pursuant to 8 C.F.R. Sec. 204.11(c)(5), to ensure that the child satisfies the requirements for classification as a special immigrant juvenile." *Best Interest Order*, dated December 19, 2005. The juvenile court issued a second order on September 1, 2006, in which it confirmed that it is maintaining jurisdiction over the applicant until his 22nd birthday, pursuant to its authority under Florida Statute section 39.013(2).

The District Director noted that the applicant had 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 19th birthday. This jurisdiction may continue for a period not to exceed one year beyond the youth's 18th 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 18th 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." The District Director effectively concluded that the juvenile court's retention of jurisdiction beyond the applicant's 18th birthday, under Florida Statute section 39.013(2), did not preserve the applicant's eligibility for long-term foster care as required by 8 C.F.R. § 204.11(c)(5).

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* at 18. 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 19 (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). The Best Interest Order was issued on December 19, 2005, 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 "to ensure that [he] satisfies the requirements for classification as a special immigrant juvenile." *Best Interest Order* at 1. The juvenile court confirmed that it would retain

jurisdiction until the applicant's 22nd birthday in a second order. *Juvenile Court Order*, dated September 1, 2006.

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 neglect and abandonment of the applicant by his parents. The juvenile court provided that it would retain jurisdiction over the applicant until his 22nd birthday, pursuant to Florida Statute section 39.013(2). The juvenile court made no indication that its finding of the non-viability of family reunification would expire on the applicant's 18th birthday, or at any time prior to his 22nd birthday. Nor does the record reflect that the juvenile court has issued a subsequent order amending its findings or its retention of jurisdiction. Thus, by the juvenile court retaining jurisdiction, the applicant remains dependent upon the court and the determination of the non-viability of family reunification remains effective. *Best Interest Order* at 1.

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. §§ 204.11(a) and (c)(5).

The AAO finds that the applicant has established that he meets the requirements for SIJ status as provided in sections 203(b)(4) and 101(a)(27)(J) of the Act and 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, by a preponderance of the evidence, eligibility for the benefit sought. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.