

II. Statement of Facts

(Minor) is a 16-year-old girl from Mexico who currently resides in a foster home in XXX County as she has no parent, guardian or relative willing or able to provide for her. (Minor)'s mother abandoned her when she was 9-years-old, and (Minor)'s paternal grandmother raised her until that caretaker died approximately two years ago. Subsequently, (Minor) lived with her godmother in Mexico for a few months until she came undocumented into the United States with her father. (Minor) resided with her father in XXXXXX from May 2002 until he left for Mexico in October 2002. (Minor) continued to reside in her father's rented room until she received information about two weeks after he had left for Mexico that her father had died. The owners of the apartment where (Minor) was staying contacted social services, and they detained (Minor) in a foster home. (Minor) does not have any known paternal or maternal relatives in the United States or Mexico who are willing or able to provide for her.

On November 7, 2002, this court made a prima facie finding that (Minor) is at risk of serious physical or emotional harm pursuant to Welfare and Institutions Code¹ section 300 subdivision (g) in that she has no parent or guardian willing or able to provide for her because her father is deceased and her mother's whereabouts are unknown. This court detained (Minor) in foster care and ordered the Agency and minor's counsel to contact the Mexican Consulate to either obtain a visa for (Minor) to remain in the United States or find an appropriate placement for her in Mexico.

At the pre-trial resolution conference hearing on November 27, 2002, the Agency informed this court that the Mexican Consulate collaborates with D.I.F., Mexican Social Services, to reunite children with any available family members in Mexico. Given (Minor) does not have any parent, guardian, or relative to care for her, the Agency recommended that the court take jurisdiction, declare (Minor) a dependent, place her in suitable placement, and order permanent placement services. (Minor), through her counsel, also requested that the court take jurisdiction, declare her a dependent, find that long term foster care is the most appropriate plan and refer (Minor) for special immigrant juvenile status. This

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

1 court continued the pre-trial resolution conference to X, 2003 and ordered the Agency to have a
2 representative from D.I.F., the Mexican Consulate, and their International Unit present at the hearing.

3 (Minor) has been in her current foster home since her initial detention, and she is adjusting well.
4 She is enrolled in the 9th grade at XXXXXX High School. She is presently attending English-as-a-
5 Second-Language classes at a local adult school. She is grieving the loss of her father and has been
6 referred to individual counseling.

7 8 **III. Discussion**

9 **A. (Minor) Should be Allowed to Remain in the United States Legally as She Meets the** 10 **Criteria for the Special Immigrant Juvenile Status.**

11 By creating special immigrant juvenile status, Congress has recognized that undocumented
12 children who have been abused, neglected, or abandoned, cannot reunify with their parents, and cannot
13 return to their home country because it is not in their best interests, should be allowed to remain in the
14 United States legally. In order to qualify for special immigrant juvenile status, an unmarried child under
15 the age of twenty-one must meet the following criteria. First, the child must be declared dependent by a
16 juvenile court in the United States, or legally committed to, or placed under the custody of, an agency or
17 department of a state. (See 8 U.S.C. § 1101 (a) (27) (J).) Second, the child must be “deemed eligible for
18 long term foster care, due to abuse, neglect or abandonment.” (*Id.*) This requires that a court find that
19 family reunification is no longer a viable option. Finally, the juvenile court must find that it is not in the
20 child’s best interest to be returned to the home country. (*Id.*) A child who meets these requirements and
21 is not inadmissible under the immigration laws qualifies for lawful permanent residence.

22 The Code of Federal Regulations further defines those eligible for special immigrant juvenile
23 status as an alien who is under twenty-one years of age, unmarried, declared a dependent of a juvenile
24 court located in the United States, deemed eligible for long-term foster care, and found by the juvenile
25 court that return to his country of nationality or his last habitual residence or that of his parents is not in
26 his best interests. (See 8 C.F.R. § 204.11 (2002).)

27 (Minor) meets the criteria for special immigrant juvenile status as she is a 16-year-old unmarried
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1 alien who has been abandoned in the United States. Family reunification is not viable, and it is not in
2 her best interest to return to Mexico. (Minor) is eligible for long term foster care in that reunification
3 with her parents is not possible because her father is deceased and her mother's whereabouts are
4 unknown. She is currently stable in a foster home in where she attends school and individual
5 counseling. She can be expected to remain in long term foster care until at least age 18. She cannot
6 return to Mexico where she has no known family to care for her and no alternative placement. The only
7 barrier to applying for special immigrant juvenile status is a declaration of dependency
8 and a referral to long term foster care.

11 **IV. Conclusion**

12 (Minor) faces an uncertain fate if she is returned to Mexico. There is no evidence that she would
13 receive similar care in Mexico much less a family atmosphere she presently enjoys. In fact, the Mexican
14 Consulate does not have any identified living arrangement for her in Mexico, and the Agency
15 recommends that she remain in the United States. Therefore, it would be an abuse of discretion if this
16 court removed (Minor) from the stability of her current foster home, school and counseling and returned
17 her to Mexico where she has no family and no other supports.

21 Respectfully submitted,

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Attorney for the child, (Minor)
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