U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21110731

Date: NOV. 7, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we subsequently dismissed the Petitioner's appeal. The matter is now before us on a combined motion to reopen and reconsider. On motion, the Petitioner submits a brief and asserts the record establishes his eligibility for SIJ classification. Upon review, we will dismiss the motions to reopen and reconsider.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

To establish eligibility for SIJ classification, a petitioner must show that they are unmarried, under 21 years old, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b).[1] The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner in the custody of a state agency or an individual or entity appointed by the state or juvenile court. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1). The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

[1] The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when a petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. 8 C.F.R. § 204.11(b)(5). USCIS may withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. *Id.* The petitioner bears the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Factual and Procedural History

In [redacted] 2016, when the Petitioner was 20 years old, the [redacted] Family Court in New York issued an order appointing M-S-[2] as the Petitioner's guardian. In a separate order titled *ORDER-Special Immigrant Juvenile Status* (SIJ order), the Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was "dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court." Additionally, the Family Court found that the Petitioner's reunification with his father was not viable due to abuse and neglect, and that it would not be in the Petitioner's best interest to be removed to India, his country of origin. The court specified that the Petitioner's father "started verbally and physically abusing [the Petitioner] when he was 14. He also forced the [Petitioner] to work as a laborer and neglected to send him to school. He also left the [Petitioner] without clothing in the wintertime."

Based on the Family Court's orders, the Petitioner filed his SIJ petition in September 2016. The Director denied the petition, finding that the Family Court was not acting as a juvenile court, which is defined in 8 C.F.R. § 204.11(a) as a court with "jurisdiction under state law to make judicial determinations about the custody and care of juveniles." The Director concluded that as the Petitioner was 20 years old and had attained the age of majority in New York when the orders were granted, the Family Court did not have jurisdiction under New York law over the Petitioner's custody as a juvenile and the guardianship issued upon his consent was not equivalent to a qualifying custodial placement.

In our decision on appeal, which we incorporate here by reference, we determined that the Petitioner is a member of the *R.F.M. v. Nielsen* class and in accordance with the district court's orders in that case, the Family Court was acting as a juvenile court when it appointed a guardian for the Petitioner and declared him dependent on the Family Court.[3] We also found that the court made a qualifying best interest determination as section 101(a)(7)(J)(ii) of the Act requires, and we withdrew the Director's decision to the contrary. However, we dismissed the appeal, finding that the record did not establish that the court issued a qualifying parental reunification determination because the order does not cite any specific provision in New York law for the court's reunification determination. We also concluded that the Petitioner's request for SIJ classification did not merit USCIS' consent due to

[2] We use initials to protect identities.

[3] *R.F.M. v. Nielsen*, Amended Order, No. 18 Civ. 5068 (S.D.N.Y. May 31, 2019).

inconsistencies between the Petitioner's claims in support of his SIJ petition and his statements during a 2014 credible fear interview. On motion, the Petitioner submits a brief and no additional evidence.

B. No Qualifying Parental Reunification Determination

To be eligible for SIJ classification, the Act requires a juvenile court determination that a petitioner's reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law, the record must contain evidence that the juvenile court made a determination based on relevant state law. *See id.*; *see also* 6 USCIS Policy Manual J.3(A)(1), https://www.uscis.gov/policy-manual (indicating, as guidance, that the SIJ order should use language establishing that the specific judicial determinations were made under state law.)

On motion, the Petitioner refers to our conclusions that he is a member of the *R.F.M. v. Nielsen* class and the court made a qualifying best interest determination. He asserts that we have therefore conceded that the Family Court made the necessary findings in the SIJ order for him to apply for SIJ status, including making a qualifying parental reunification determination. The Petitioner contends it is not clear on what basis we found that the Family Court made an individualized assessment regarding the best interest determination, but not regarding parental unification, and we exceeded the scope of our consent function.

Here, the Petitioner has not overcome the deficiencies noted in our dismissal of his appeal. Specifically, he has not submitted evidence to demonstrate that the Family Court's parental reunification determination was issued in accordance with relevant New York state law. As we discussed in our decision dismissing his appeal, the Act requires a juvenile court's determination that SIJ petitioners cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act. The plain language of the Act requires this reunification determination to be made under state law. *Id.* Accordingly, state court orders that only cite or paraphrase immigration law and regulations will not suffice if the petitioner does not otherwise establish the basis in state law for the juvenile court's reunification finding.

In the SIJ order, the Family Court determined that the Petitioner's reunification with his father was not viable due to abuse and neglect; the order does not cite any provision in New York law for the court's reunification determination; and instead the order indicates that the Family Court's findings are in accordance with federal immigration law. We noted in our previous decision that the record did not contain the underlying petition for the SIJ order, hearing transcript, or any other relevant evidence to demonstrate any state law basis for the Family Court's parental reunification determination. On motion, the Petitioner does not provide additional evidence to satisfy this requirement. Accordingly, a preponderance of the evidence does not establish that the Family Court made a qualifying determination that the Petitioner cannot reunify with one or both of his parents due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires.

III. CONCLUSION

The Petitioner has not submitted evidence to establish the state law basis underlying the Family Court's parental reunification determination, as section 101(a)(27)(J)(i) of the Act requires. Therefore, the Petitioner has not met his burden to establish that he is eligible for SIJ classification.[4]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] Since the identified basis for denial is dispositive of this matter, we decline to reach and hereby reserve the remaining grounds for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).