U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22429076

Date: OCT. 26, 2022

Appeal of National Benefits Center 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 the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *Matter of Christo's Inc.,* 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, the appeal will be dismissed.

I. LAW

To establish eligibility for SIJ classification, petitioners 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 parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b). Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual or entity appointed by the state or the 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 petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through USCIS, when the 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. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5). USCIS may also 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. 8 C.F.R. § 204.11(b)(5). Petitioners bear 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. Resolution of Filing and Clerical Errors

Before reaching the merits of the Petitioner's claim on appeal, we must address a procedural issue related to filing and clerical errors by USCIS. In June 2021, the Petitioner concurrently filed an appeal of his denied SIJ petition (Form I-360 receipt number: [redacted] Form I-290B receipt number: [redacted] and a motion to the Director on his denied Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485 receipt number: [redacted] Form I-290B receipt number: [redacted] Due to a filing mistake, the Petitioner's appeal on his denied SIJ petition was incorrectly entered into USCIS systems as a motion, and his motion on his denied Form I-485 was incorrectly entered as an appeal.

We subsequently issued a letter dated February 1, 2022, rejecting the appeal of the Form I-485 because we lack jurisdiction over appeals of that benefit type. During subsequent review, we found clarifying information in the record that the Petitioner had not filed an appeal on his Form I-485 but had instead properly filed a motion to the Director and that our rejection was therefore in error. Accordingly, on April 15, 2022, we notified the Petitioner that we were reopening his Form I-485. However, in that notice of reopening, we incorrectly listed the receipt number for the Petitioner's Form I-290B relating to his SIJ petition, [redacted] instead of the receipt number of the Form I-290B relating to his Form I-485.

The Director has since adjudicated the Petitioner's motion on his Form I-485, over which the Director has jurisdiction, and issued a decision denying that application. The decision herein addresses the merits of the Petitioner's properly filed appeal of his SIJ petition, receipt number [redacted]

B. Relevant Facts and Procedural History

In [redacted] 2015, when the Petitioner was 20 years old, the Family Court in [redacted] New York issued an order appointing the Petitioner's brother as his guardian pursuant to New York Family Court Act section 661 and New York Surrogate's Court Procedure Act section 1707. On the same date, the Family Court issued an *ORDER-Special Immigrant Juvenile Status* (SIJ order) in which it found that the Petitioner is dependent upon the Family Court, his reunification with his parents is not viable due to abandonment and neglect by both parents and abuse by his father under New York law, and it is not in the Petitioner's best interest to return to India, his country of nationality. Based on the Family Court's orders, the Petitioner filed his SIJ petition. The Director denied the petition, concluding that the record contained unresolved inconsistencies and the Petitioner therefore had not established that USCIS' consent to his SIJ classification is warranted.

On appeal, the Petitioner submits copies of previously submitted evidence; bank records and a copy of a lease from 2015; and a brief. He addresses inconsistencies the Director raised and argues that he has submitted sufficient evidence to show that he merits USCIS' consent to his SIJ classification.

C. USCIS' Consent is Not Warranted

As discussed above, SIJ classification may only be granted upon USCIS' consent. Section 101(a)(27)(J)(i)-(iii) of the Act. For USCIS to consent, the request for SIJ classification must be bona fide, which means the petitioner must establish that a primary reason they sought the juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. 8 C.F.R. § 204.11(b)(5). Where evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification is not bona fide, USCIS may withhold consent. *Id.* The Director raised multiple inconsistencies between the Petitioner's SIJ petition and his other immigration filings. Although the Petitioner has offered explanations, unresolved discrepancies remain and he has not met his burden of showing by a preponderance of the evidence that his request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5).

The Petitioner has provided inconsistent information about his educational history, which formed part of the basis for the Family Court's finding of abuse, abandonment, and neglect by his parents. In his [redacted] 2015 affidavit to the Family Court, the Petitioner stated that his father did not allow him to complete his education and wanted him to work instead. He claimed that when he was around 16 years old, his father "said he cannot support the family only by himself and he wanted [the Petitioner] to earn money," and "would get mad and violent if [the Petitioner] would ask him to let [him] go to school," and his mother "also never supported [him] to let [him] go to school." In his Form I-589, Application for Asylum and for Withholding of Removal (asylum application), the Petitioner indicated that he attended [redacted] in India from June 2001 to February 2012. Similarly, he states in an April 2021 affirmation submitted in response to the Director's notice of intent to dismiss (NOID) and again on appeal that he "stopped attending school in February 2012." On April 26, 2017, the Petitioner gave a sworn statement[1] before the Director regarding his SIJ petition, stating that he had been attending school at [redacted] but stopped in 2012 due to problems with his father.

By contrast, in his application for a B-2 nonimmigrant visa filed in December 2012, the Petitioner reported that he was currently a student at [redacted] Public School. On appeal, the Petitioner asserts that a third party completed and filed the visa application on his behalf and that it contained factual inaccuracies. However, the Petitioner stated during an interview relating to his visa application that he was attending [redacted] Public School. Additionally, the Petitioner previously submitted a photograph showing himself in front of a sign that states [redacted] Academy Annual Carnival On 22 December 2012." This photograph suggests that the Petitioner was attending school in December 2012, in contrast to his prior claim that he stopped attending in February 2012, and further conflicts with his assertion in his visa application that he attended [redacted] Public School. The Petitioner states on appeal that he "has not submitted any evidence that he was a student in December 2012," but does not address the December 2012 photograph or provide sufficient evidence to dispute the information in the visa application he filed. The evidence he has provided is materially inconsistent with his claims before the Family Court that his parents did not allow him to attend school.

[1] The record of the Petitioner's sworn statement, which lists each question and answer, indicates that the Petitioner affirmed that the answers contained therein are "true and correct to the best of [his] knowledge and belief and that this statement is a full, true, and correct record of [his] sworn statement . . . ." The sworn statement contains the Petitioner's signature on the last page and his handwritten initials on each page.

The Petitioner has also submitted conflicting evidence about the timeline of his residence with and support from his parents. The Petitioner informed the Family Court in his 2015 affidavit that because his parents prevented him from attending school and wanted him to work at the age of 16 years, he "decided to come to the United States of America" to live with his brother, who had also left India in part due to the family's "financial condition." By contrast, the Petitioner stated in his April 2017 sworn statement that that he stopped living with his family in "2012 November," when he would have been 17 years old, because his parents kicked him out of the house. He indicated that he then became homeless and lived in a *Gurdwara*, or Sikh temple, for approximately "5 and a half months" before coming to the United States. According to the Petitioner's sworn statement, he has not had any contact with his parents since the day they kicked him out. However, in his December 2012 nonimmigrant visa application, he reported that his father, with whom he was living, would pay for his trip to New York and Florida. Although he states on appeal that he "did not definitively state that he was kicked out in . . . November 2012" but instead that he left "sometime end of November early December of 2012," the record of his sworn statement reflects that when asked, "When did you stop living with your family?" his answer was "2012 November." He further claims that because he was unsure about the exact date, he reported in his sworn statement that he was "homeless for about five or five and a half months" between the time his parents kicked him out and the time he traveled to the United States. However, the record reflects that the Petitioner arrived in the United States on July 14, 2013, which would have been seven to eight months after the Petitioner's departure from his parents' house in late November or early December of 2012. Also, despite his claim that a third party filed his visa application with incorrect information, records of his visa interview reflect that he stated his father would pay. The Petitioner's explanations do not reasonably resolve the discrepancy between the Petitioner's claims about when and why he departed his family's home and lost the support of his parents.

Additionally, the Petitioner has provided inconsistent evidence about how and why he came to the United States. In his November 2015 affidavit to the Family Court, he stated that he decided to come here in order to live with his brother and "arranged money from relatives to pay the travel agent's fees . . . ." In his April 2017 sworn statement, the Petitioner recounted that while living at the *Gurdwara*, he found information about traveling to the United States. When asked who arranged his travel, he claimed that it was "some guys who were living there" and a committee "which consist of elder members . . . would arrange the trip." The Petitioner states in his April 2021 affirmation that members of the *Gurdwara* helped connect him with an agent while his relatives helped with the expenses, but this does not sufficiently explain the differing accounts of how and why he came to the United States. In particular, there is not enough evidence to explain his father's role in his December 2012 plans for a school trip after allegedly kicking the Petitioner out of the house due to financial difficulties and disagreements about whether he should attend school. Additionally, in the *Memorandum of Law in Support of Application for Guardianship and Motion for Special Findings* (memorandum of law) filed with the Family Court, the Petitioner's counsel asserted that his parents "forced their minor son to undertake the dangerous journey from India to the United States on his own." The Petitioner's other filings conflict with this claim in various ways. As discussed, the visa application indicates that his father funded his trip, the purpose of which was tourism. The sworn statement shows that he found information about coming to the United States while living at the *Gurdwara* after his parents kicked him out and that a committee of "elder members" arranged the trip. His affidavit to the Family Court stated that after his parents would not allow him to attend school, he made a personal decision to come

here to live with his brother and that relatives paid the fees. None of these statements is consistent and the Petitioner has not provided a sufficient explanation.

Furthermore, the Petitioner has provided inconsistent information about his address and history of residence in the care of his brother in the United States. The guardianship order indicates that the motion for guardianship was verified by the Family Court on October 22, 2015. On appeal, he provides a lease his brother signed to begin residence in [redacted] New York on October 15, 2015, and his brother's bank statement for October 23 through November 23, 2015, listing the same New York address. However, the Petitioner stated in his April 2017 sworn statement that he did not move to New York with his brother until November 2015, and he confirmed this information in his April 2021 affirmation.

Additional conflicting information appears in his asylum application, where he indicated that he lived in New York beginning in August 2013. In a motion to change venue filed with the Immigration Court in September 2014, he indicated that he had recently moved from the home of "a relative" in [redacted] Illinois[2] to [redacted] New York, to live with a friend because he had nowhere to live in Illinois. Although he claims this was a typographical error and that it should have stated he went to live with his brother rather than with a friend, he does not explain why he informed the Immigration Court he had moved to New York as of September 2014, when he states on appeal that he did not do so until November 2015. Additionally, the change of address form he filed with the Immigration Court specified that his prior mailing address was "In care of" his brother, while the portion of the form listing his new address left the "In care of" portion of the form blank. This information appears to confirm the information in the motion to change venue that he left the home of his "relative" to live with someone different in New York. Moreover, in his Form G-325A, Biographic Information sheet submitted in support of his Form I-485, Application to Register Permanent Residence or Adjust Status, the Petitioner indicated that he lived in [redacted] Illinois from July 2013 to August 2013; [redacted] Indiana from August 2013 to June 2015; and [redacted] New York from June 2015 to the time of filing the Form G-325A on January 13, 2016. He stated in his April 2021 affirmation that he is "unable to address this allegation because USCIS did not provide a copy of its record" where information regarding his Indiana residency appears, but the Director specified that it appeared on the Form G-325A the Petitioner filed. The record does not clearly establish that the Petitioner was a resident of New York at the time the guardianship petition was filed, or that he "has been living with [his brother] ever since coming to the U.S." as he informed the Family Court in support of the petition for guardianship.

The record contains unresolved discrepancies regarding the Petitioner's residence with, and financial and educational support from, his father. Additionally, the record contains material inconsistencies relating to his school attendance and the timeline of his residence with the brother who was appointed his guardian. This evidence materially conflicts with the Family Court's determinations, which were based on his affidavit and motion to the court indicating that his parents prevented him from attending school, did not provide for him financially, and forced him to come to the United States alone, such that he had to seek

[2] In support of his motion to change venue, the Petitioner filed a change of address form with the Immigration Court listing his prior address as [redacted] IL [redacted] and stated in the brief in support of the motion that he had been living in [redacted] and "most recently relocated to New York," and had "no place to reside in Illinois." Publicly available information shows that the zip code [redacted] relates to [redacted] Indiana, rather than Illinois. The reference to Illinois in his motion to change venue and supporting documentation is not clear.

support and guardianship with his brother. The Petitioner has not provided sufficient evidence or argument to resolve these material inconsistencies. Accordingly, he has not shown by a preponderance of the evidence that his request for SIJ classification is bona fide, as required under 8 C.F.R. § 204.11(b)(5).

ORDER: The appeal is dismissed.