U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 18140556

Date: SEP. 29, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner's court order did not make the required determinations for SIJ eligibility. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. We review 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, we will dismiss the appeal.

## 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).[1] 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

[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).

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

In [redacted] 2018, when the Petitioner was 18 years old, the Family Court of the State of New York, [redacted] (Family Court) issued an order appointing J-A-G-R-[2] as the Petitioner's guardian (guardianship order) in guardianship proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate's Court Procedure Act (SCPA). Based on this order, the Petitioner filed the instant SIJ petition in May 2018.

The Director issued a request for evidence (RFE), explaining that the Petitioner had not provided a court order from a juvenile court with the required SIJ determinations, noting that to demonstrate eligibility for SIJ classification, he must submit a juvenile court order declaring, in pertinent part, that: 1) reunification with one or both of his parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and 2) it would not be in his best interest to be returned to his or his parent's country of nationality or last habitual residence. In response to the RFE, the Petitioner explained that the Family Court in New York was closed due to the COVID-19 pandemic and that it was "impossible to get the evidence required from Family Court to the address the RFE by the deadline set by USCIS." The Director denied the SIJ petition, concluding that the Petitioner did not provide a court order from a juvenile court with the required SIJ determinations.

On appeal, the Petitioner, through counsel, reasserts his eligibility. Upon *de novo* review, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case). In this case, while the guardianship order submitted below established that the Family Court made a qualifying juvenile custody determination, it did not include judicial determinations by the juvenile court regarding parental reunification and the Petitioner's best interest, as required by section 101(a)(27)(J) of the Act.

The Petitioner also submits a new Special Findings Order, dated [redacted] 2021, containing parental and best interest determinations by the Family Court. The Petitioner further argues, on appeal, that, pursuant to *Perez-Olano v. Holder*, No. CV 05-3604, Settlement Agreement ¶ 8 (C.D. Cal. Dec. 15, 2010), his Family Court guardianship order should not be considered expired despite his now being 21 years old. He states that he "received an order granting guardianship over his person and as a result of [] said order, the judge also issued a special findings order." However, the Stipulation enforcing the *Perez-Olano* settlement agreement stipulates that USCIS will not deny an SIJ petition if the petitioner's valid juvenile court order was terminated based solely on age prior to filing the SIJ petition. Here, *Perez-Olano* does not apply because the SIJ petition was not denied on this basis, but

[2] We use initials to protect the privacy of individuals.

rather because the record, including the guardianship order, did not establish that the juvenile court made the requisite parental reunification and best interest determinations.

To be eligible for SIJ classification, juveniles must have been the subject of a "juvenile court" order that contains the requisite judicial determinations regarding parental reunification and the Petitioner's best interest. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b)(4), (c)(1). The term "juvenile court" is defined as "a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles." 8 C.F.R. § 204.11(a). Although the specific title and type of state court may vary, SIJ petitioners must establish that the juvenile court "exercised its authority over the petitioner as a juvenile and made the requisite judicial determinations in this paragraph under applicable State law." 8 C.F.R. § 204.11(c)(3)(i). In making this determination, state law, not federal law, governs the definition of "juvenile," "child," "infant," "minor," "youth," or any other equivalent term for juvenile which applies to the dependency or custody proceedings before the juvenile court. *See* 8 C.F.R. § 204.11(a), (c)(3)(i) (requiring courts to have jurisdiction over and make determinations about juveniles under applicable state law); *see also Budhathoki v. Nielsen*, 898 F.3d 504, 513 (5th Cir. 2018) ("Although the regulation permits an applicant for SIJ status to be someone who has not yet become age 21, what controls on eligibility for that status is the state law governing decisions over the care and custody of juveniles"); Final Rule, Special Immigrant Juvenile Petitions, 87 Fed. Reg. at 13077 (indicating that state law governs the definition of juvenile and other similar terms).

In this case, the guardianship order from the Family Court in New York, which cited section 661 of the N.Y. Fam. Ct. Act and section 1707 of the SCPA, was issued when the Petitioner was 18 years old. Section 661 of the N.Y. Fam. Ct. Act states, in pertinent part, that "[f]or purposes of appointment of a guardian of the person pursuant to this part, the terms infant or minor shall include a person who is less than twenty-one years old who consents to the appointment or continuation of a guardian after the age of eighteen." Further, section 1707 of the SCPA states that "[t]he appointment of a guardian of a child shall expire when the infant or child reaches the age of eighteen years, unless the infant or child consents to the continuation of a guardian after his or her eighteenth birthday, in which case such term of office expires on his or her twenty-first birthday . . ." Consequently, the record indicates that the New York Family Court exercised its jurisdiction over the Petitioner as a juvenile when it issued the guardianship order prior to the Petitioner's twenty-first birthday. However, as stated, the guardianship order does not include the required SIJ determinations regarding parental reunification and best interest, and contrary to the Petitioner's assertions on appeal, there is no evidence that the Family Court made any such judicial determinations when it issued that order during the pendency of the guardianship proceedings.

Although the Petitioner submits a new Special Findings Order on appeal, which now includes the required SIJ determinations, it was issued in [redacted] 2021, when the Petitioner was over 21 years old and no longer a juvenile under New York law. The Special Findings Order also specifically states that the Petitioner "is no longer under 21 years of age," and it was not issued *nunc pro tunc* to a date when the Petitioner was still a juvenile under state law. Although the order refers to the Petitioner as a "child" and cited section 13 of Article 6 of the New York State Constitution, section 115 of the N.Y. Fam. Ct. Act, and section 384(b) of the Social Services Law, those statutory provisions do not provide the New York Family Court with jurisdiction over the Petitioner as a juvenile under state law when it issued the Special Findings Order and made the required parental reunification and best interest

determinations after his twenty-first birthday. The order also contains no indication that the court previously made these judicial determinations during the Petitioner's guardianship proceedings when he was still under 21 years of age.[3]

Accordingly, the Petitioner has not established by a preponderance of the evidence that the Family Court made the requisite parental reunification and best interest determinations prior to the Petitioner's twenty-first birthday when the court still had jurisdiction over him as a juvenile in his guardianship proceedings. While we do not question the validity of the Family Court's 2021 Special Findings Order submitted on appeal, the Petitioner has not demonstrated that the court was acting as a juvenile court when it issued the new order and made the required SIJ related determinations after the Petitioner's twenty-first birthday, when he was no longer a child under New York law. Therefore, the Petitioner has not met his burden to establish that he is eligible for SIJ classification.

**ORDER:** The appeal is dismissed.

[3] We acknowledge the Petitioner's arguments on appeal that USCIS should exercise discretion in accepting the Special Findings Order because the Family Court in New York was closed due to the COVID-19 pandemic and, had it not been closed, he would have been able to provide it in response to the RFE. However, while we acknowledge the Petitioner's explanations for the delay in obtaining the order, we lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that as long as regulations remain in force, they are binding on government officials). The Petitioner has not identified, and we are unaware of, any authority that would permit the AAO or USCIS to disregard the statutory requirement for judicial determinations regarding parental reunification and best interest by a juvenile court.