U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16189595

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 (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 sustained.

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. Relevant Facts and Procedural History

The Petitioner, a native and citizen of Guatemala, entered the United States with her young child in [redacted] 2016, at the age of 18 years. In [redacted] 2017, when the Petitioner was 19 years old, the Superior Court in [redacted] California issued an order appointing J-C-M-L-[1] as the Petitioner's guardian. On the same date, the Superior Court issued an order of *Special Immigrant Juvenile Findings* (SIJ order), determining in part that the Petitioner's reunification with her father was not viable due to abandonment under sections 3492 and 7822 of the California Family Code and section 300(g) of the California Welfare and Institutions Code. The court noted that the Petitioner's father had not provided her with support, communication, or care and supervision since he left when she was two years old, and there was no evidence that he "would be willing or able to provide her a home now." Furthermore, the Superior Court concluded that it would not be in the Petitioner's best interest to be returned to Guatemala because she and her child would be unable to live safely there and she has bonded with her guardian, who has helped her to enroll in school.

In response to a request for evidence (RFE) from the Director, the Petitioner submitted an amended SIJ order in which the Superior Court found, in relevant part, that the court found the appointment of a guardian for the Petitioner to be "necessary and convenient to protect the [Petitioner] from abuse, neglect, or abandonment within the meaning of state law . . . ." Additionally, the court provided the state law basis for its best interest determination.

In the RFE, the Director notified the Petitioner that USCIS records indicate that she married E-E-B-M- in Guatemala and then resided jointly with him in the United States. The Director explained that at the time of her entry and apprehension on [redacted], 2016, when officials of U.S. Customs and Border Protection (CBP) asked the Petitioner about her marital status, she stated she had been "separated" for about five months. Further, the Director informed the Petitioner that a credible third party witness informed CBP officials at the time of her apprehension that the Petitioner had been married to E-E-B-M- for about three years, they were still together, E-E-B-M- and his mother (the Petitioner's mother-in-law) had planned her trip to the United States, and E-E-B-M- was already living in Texas and would relocate to California as soon as the Petitioner and her child arrived in the United States.

In response to the RFE, the Petitioner submitted a "Proof of Singleness" certificate from Guatemala showing there is no record that she has been married, and her child's birth certificate showing that she did not take on a married name. She also provided a personal statement explaining that E-E-B-M- is her boyfriend, and they have a child and live together, but they have never been married. She stated that she does not recall her statements during her [redacted] 2016 apprehension, but may have said that she and E-E-B-M- had been apart for five months because they did not travel to the United States together. Additionally, she claimed that she may have referred to E-E-B-M- as her "*esposo*," which

[1] We use initials to protect identities.

is the Spanish word for "husband," because he is her boyfriend and the father of her child, but she would not have intentionally signed anything stating that she was married. She further noted that she did not know who the "credible third party witness" could be, and notes that to have been married for three years by [redacted] 2016, she would have had to marry when she was 15 years old, therefore requiring her mother's consent. She also states that if she were married at the time of her child's birth, his birth certificate would have shown that she had taken on a married name, which it does not. The Petitioner stated that E-E-B-M- may have told immigration authorities that he was planning to marry her in two or three years, which officials may have misunderstood to mean that they had already been married for three years.

She also submitted in response to the RFE a statement from E-E-B-M-, who similarly reported that he and the Petitioner live together and have a child, but have never been married. E-E-B-M- indicated that he may have referred to her as his "*esposa*," or "wife," in conversations because they "are in a committed relationship and have a child," but that he truthfully told immigration officials in a credible fear interview that he was planning to marry the Petitioner in the future and correctly indicated on other immigration forms that he was single. He stated that he gave the Petitioner and her counsel permission to review his application for asylum and submit copies of that application in support of her SIJ petition. The relevant documentation provided includes a portion of E-E-B-M-'s credible fear interview, in which he stated that he was not married but "was going to get married to [his] girl this year," had been unable to propose to her earlier as planned because of events in Guatemala, and they had agreed that they would marry "as soon as [he] finish[es] school." Additionally, the Petitioner provided a section of E-E-B-M-'s Form I-589, Application for Asylum and for Withholding of Removal (asylum application), on which he indicated that he is not married, and his Form I-765, Application for Employment Authorization, where he noted that his marital status is "Single."

The Director denied the SIJ petition based on a determination that the Petitioner did not submit sufficient evidence to show that she is not married. The Director noted that during her interview with CBP in [redacted] 2016, the Petitioner stated that E-E-B-M- was her ex-husband, and that he was in Guatemala while her mother-in-law lived in the United States. Additionally, the Director again referenced the testimony of a "credible third party witness." The Director further noted that the Petitioner and E-E-B-M- had listed the same residential address on their immigration filings, and that the biographical information page on E-E-B-M-'s Form I-870, Record of Determination/Credible Fear Worksheet (credible fear worksheet), indicated that he was married.

B. Evidence of the Petitioner's Marriage

Federal immigration law mandates that a petitioner must be eligible for the immigration benefit sought at the time of filing and that a petitioner seeking SIJ classification must be unmarried. 8 C.F.R. § 204.11(b)(2) (2022). Our *de novo* review of the record, as supplemented on appeal, shows that the Petitioner has established by a preponderance of the evidence that she is unmarried, as required.

On appeal, the Petitioner argues that the records upon which the Director relied do not show that she is married, and that she has submitted sufficient evidence to show that she is not married. She asserts that the Superior Court would not have been able to appoint a guardian for her under California law if she were married, and that the Director's determination to the contrary violates agency policy that USCIS "defers to the court on matters of state law and does not go behind the juvenile court order to

reweigh evidence and make independent determinations . . . ." 6 *USCIS Policy Manual* J.2, https://www.uscis.gov/policy-manual. She further notes that it would have benefited the Petitioner and E-E-B-M- if they had been married at the time he applied for asylum because he would have been able to include her in that application. Moreover, she states that although she may have referred to E-E-B-M- as her husband and to his mother as her mother-in-law, this is common among long-term dating partners in Central America and does not indicate that she was married. As support for this claim, she submits an affidavit from an accredited representative who is fluent in English and Spanish and states that in her experience working with Central American migrants, she has learned that it is "extremely common for unmarried persons in committed relationships to refer to their unmarried partners as 'esposo or esposa' (husband or wife) . . . and to refer to the family of their unmarried partners as their in-laws." Further, the Petitioner argues that the fact that the biographical information page on E-E-B-M-'s credible fear worksheet indicated that he was married does not negate his testimony during his credible fear interview that he was not yet married and planned to marry the Petitioner in the future.

As further support for her claims on appeal, the Petitioner submits a copy of E-E-B-M-'s Guatemalan identification card, which shows that his marital status is single; a "Proof of Singleness" certificate from Guatemala relating to E-E-B-M-; his 2019 federal income tax return showing he filed as single; a letter from the Petitioner's mother stating that although the Petitioner and E-E-B-M- have a child together, "they never had a formal relationship that tie [*sic*] them in a civil marriage" and "she was never married to anyone . . . in Guatemala"; a letter from the Petitioner's pastor declaring that he has "no information indicating that she ever performed any civil marriage . . . in Guatemala, for which reasons she is in a free single state . . . ."; and a full copy of E-E-B-M-'s credible fear worksheet.

The Petitioner has submitted sufficient evidence to show by a preponderance of the evidence that she did not marry E-E-B-M-. Although USCIS records show that the Petitioner referred to E-E-B-M- as her ex-husband and his mother as her mother-in-law in her sworn statement to CBP in [redacted] 2016, she has provided a reasonable explanation for those statements. Furthermore, she has submitted significant supporting documentation, including government documents from Guatemala and signed affidavits from people with personal knowledge of the Petitioner's relationship, showing that although she was in a long-term relationship with E-E-B-M- and has a child with him, they were not legally married. Additionally, while the "Married" box is checked on the biographical page of E-E-B-M-'s credible fear worksheet and the Petitioner's name is listed as his spouse, he testified in detail during his interview that although he was in a relationship and shared a child with the Petitioner, and had intended to marry her, he had not been able to do so yet. A totality of relevant, credible evidence supports a conclusion that the Petitioner did not marry E-E-B-M-, and she has therefore met the requirement at 8 C.F.R. § 204.11(c)(1). As she has overcome the sole basis for the Director's denial, we will sustain the appeal.

ORDER: The appeal is sustained.