U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26158683

Date: DEC. 21, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 petition, and we dismissed the Petitioner's appeal, concluding that she had not demonstrated that her request for SIJ classification merited USCIS' consent. We dismissed the Petitioner's subsequent motion to reconsider, and the matter is now before us on motion to reopen.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

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

[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).

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).

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.*

II. ANALYSIS

In our prior decisions, we determined that, although the Petitioner had overcome the Director's original denial, she had not established that she merited USCIS' consent to SIJ classification.[2] In our dismissal of the Petitioner's appeal, we referenced two published decisions that had been adopted by USCIS to provide policy guidance regarding when USCIS' consent is warranted. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 (clarifying that USCIS' consent is warranted where petitioners show the juvenile court proceedings granted relief from parental abuse, abandonment, neglect, or a similar basis under state law, beyond an order enabling them to file an SIJ petition with USCIS); *see Matter of E-A-L-O-*, Adopted Decision 2019-04 (AAO Oct. 11, 2019) (clarifying that a juvenile court dependency order alone will not warrant USCIS' consent to SIJ classification absent evidence that the dependency declaration was issued in juvenile court proceedings granting relief from parental abuse, neglect, abandonment, or a similar basis under state law). When making our determination to dismiss the appeal, we concluded that the Petitioner had not shown that the court granted a form of relief or remedy from parental maltreatment, and that the record did not otherwise establish that the Petitioner sought any form of relief other than SIJ-related findings.

In our dismissal of the Petitioner's motion to reconsider, we applied the final rule, which, as noted above, was effective April 7, 2022, and amended the 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). The issuance of the final rule superseded the two prior published decisions relied upon in our dismissal of the Petitioner's appeal. *See generally* USCIS Policy Alert PA-2022-14, *Special Immigrant Juvenile Classification and Adjustment of Status* 2 (Jun. 10, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf. We again concluded that the Petitioner had not shown that the court granted a form of relief or remedy from parental maltreatment. We acknowledged the

[2] The Director denied the SIJ petition, finding that the Petitioner was ineligible because the record lacked a qualifying declaration of dependency or custody placement. Specifically, the Director determined that the orders did not cite any state law basis for the dependency declaration and did not place the Petitioner in the custody of an individual or entity in accordance with Texas law. After filing her appeal, we subsequently issued a notice of intent to dismiss (NOID), explaining that, although the Petitioner had overcome the Director's reasons for denying the petition and shown that the court had made the requisite determinations for SIJ eligibility, she had not demonstrated that her request for SIJ classification merited USCIS' consent.

juvenile court's declaration that she is "dependent upon this juvenile court in accordance with the laws of the State of Texas while [she is] under jurisdiction of this Court" and that the "purpose of this order is to protect [the Petitioner] from further abuse and neglect." However, we noted that a dependency declaration alone is not sufficient to warrant USCIS' consent to SIJ classification absent evidence that the dependency declaration was issued in juvenile court proceedings which actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. *See* 8 CFR § 204.11(d)(5)(ii)(B); *see generally* 6 *USCIS Policy Manual* J.2(D), https://www.uscis.gov/policy-manual (discussing the evidentiary requirements for USCIS consent).

On motion, the Petitioner submits a brief and copies of two District Court decisions regarding USCIS' implementation and interpretation of the requirement for consenting to a petitioner's SIJ classification. The Petitioner asserts that these new facts establish eligibility, as the two District Court decisions determined that USCIS' interpretation of the consent requirement is incorrect, and further that USCIS may not "impose additional requirements" to serve as the basis for the denial for her SIJ petition. The Petitioner further asserts that the regulations in place at the time of the Director's decision and our dismissal of her appeal were outdated, and that we should not have applied the updated regulations implemented in April 2022 to the dismissal of her motion to reconsider.

Regarding the two District Court cases cited by the Petitioner, *Doe v. Mayorkas*, 585 F. Supp 3d 49 (D.D.C. 2022) and *Cosme v. Garland*, No. CV 22-1-JJM-LDA, 2022 WL 3139000 (D.R.I. Aug. 5, 2022), we acknowledge the District Courts' conclusions; however, in contrast to the precedential authority of the case law of a U.S. circuit court, the AAO is not bound to follow the published decision of a U.S. district court. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). In our dismissal of her appeal and motion to reconsider, we applied the USCIS policy in effect at the time of our adjudication in both instances. Although the Petitioner has provided citations to the above District Court cases, she has not provided a relevant citation to any pertinent precedent decision which would establish that our implementation of the adopted decisions in our decision on her appeal, and the final rule in our decision on her motion to reconsider, was in error.[3]

The Petitioner further contends that the application of the final rule's "additional requirements" in 8 C.F.R. § 204.11(d)(5)(ii) is unlawful, "given that the regulation was implemented in 2022" and her SIJ petition was filed in 2017. The Petitioner cites *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994), which held that "congressional enactments and administrative rules will not be construed to have retroactive effect" absent language requiring it and contends that the language in the final rule did not include mention of retroactive effect. However, we note that *Landgraf* also held that "in many situations, a court should apply the law in effect at the time it renders its decision, even though that law was enacted after the events that gave rise to the suit" and that retroactive application is proper where the new law "authorizes or affects [only] the propriety of prospected relief" in which there is no "vested right." *Id* at 273-74. Further, "[t]he filing of an application for administrative benefit does not create a vested right in that benefit." *See Durable*

[3] We would also note that even if we had continued to apply our pre-2022 regulatory policy, we would still have found that the Petitioner did not warrant our consent as *Matter of E-A-L-O-* and *Matter of D-Y-S-C-* clarified that a juvenile court dependency order alone would not warrant USCIS' consent to SIJ classification absent evidence the dependency declaration was issued in juvenile court proceedings granting relief from parental abuse, neglect, abandonment, or a similar basis under state law. *See Matter of E-A-L-O-*, Adopted Decision 2019-04; *Matter of D-Y-S-C-*, Adopted Decision 2019-02.

Manufacturing Co. v. U.S. Dep't of Labor, 578 F.3d 497, 503 (7th Cir. 2009). As such, we determine that we did not err in applying the 2022 final rule to the Petitioner's motion to reconsider.

Finally, the Petitioner asserts that even if the application of the 2022 regulations to her petition was lawful, she still merits consent as the dependency declaration is sufficient relief from parental abuse, neglect, or abandonment, as the SIJ order stated that the purpose of the order was to protect the Petitioner "from further abuse or neglect" and that the relief being sought was "protection from going back to a country where she would be subjected to abuse and neglect and was based on sections of the Texas Family Code relevant to her plight." However, as we noted in our dismissal of her motion to reconsider, "a dependency declaration alone is not sufficient to warrant USCIS' consent to SIJ classification absent evidence that the dependency declaration was issued in juvenile court proceedings which actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law." Although we have acknowledged that the Petitioner's order stated that its purpose was to "protect [the Petitioner] from further abuse or neglect," the SIJ order did not outline any specific relief provided to her. As such, we again conclude that the record does not establish that the Petitioner sought any form of relief other than SIJ-related findings, and as such, does not merit USCIS' consent to her SIJ classification.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.