U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10598914

Date: JAN. 31, 2023

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 District Director of the New York, New York District denied your Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed your subsequent appeal, concluding that the New York Family Court did not make a qualifying parental reunification finding under state law and that U.S. Citizenship and Immigration Services' (USCIS) consent to the Petitioner's SIJ classification was not warranted because the record did not establish the factual basis for the Family Court's SIJ related determinations.[1] The matter is now before us on a combined motion to reopen and reconsider.[2] Upon review, we will dismiss the motions.

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).[3] 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

[1] The Director had also concluded that the Family Court was not acting as a juvenile court as the record did not establish that it had jurisdiction over the Petitioner as a juvenile when it issued the SIJ related orders in his case. Subsequent to the filing of the Petitioner's appeal, the District Court for the Southern District of New York issued a judgment in *R.F.M. v. Nielsen*, No. 18 Civ. 5068 (S.D.N.Y. April 8, 2019, amended May 31, 2019). We determined on appeal that the Petitioner is a member of the *R.F.M.* class and, consistent with the *R.F.M.* District Court orders, that the record established that the Family Court's exercise of jurisdiction over the Petitioner was as a juvenile court, as required.

[2] The Petitioner checked the box at part 2 of the Form I-290B, Notice of Appeal or Motion, indicating that he was filing a motion to reconsider the appeal decision. However, because the Petitioner's brief on motion indicates that it is also a motion to reopen and he has submitted new evidence with this filing, we will treat this filing as a combined motion to reopen and reconsider our previous decision.

[3] The Department of Homeland Security (DHS) 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).

that it is not in the petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

Additionally, a petitioner must show that they are physically present in the United States and unmarried. 8 C.F.R. §§ 204.11(b)(2)-(3) (requiring that SIJ petitioners be unmarried at the time of filing and adjudication and that they be physically present in the United States). Furthermore, the DHS final rule amending the requirements and procedures for SIJ classification specifically clarified that the Petitioner must be physically present in the United States at the time of filing the SIJ petition and at the time of adjudication. *See* Final Rule, Special Immigrant Juvenile Petitions, 87 Fed. Reg. at 13077.

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).

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

When the Petitioner was 20 years old, the [redacted] Family Court (Family Court) in New York issued an *Order Appointing Guardian of the Person*, awarding guardianship of the Petitioner to R-S-,[4] and an *Order – Special Juvenile Status* (SIJ order), making specific findings related to the Petitioner's eligibility for SIJ classification. The Petitioner filed his SIJ petition based on the Family Court's orders. The Director denied the petition, concluding that the Family Court did not make a qualifying parental reunification finding under state law and that USCIS' consent to the Petitioner's SIJ classification was not warranted because the record did not establish the factual basis for the Family Court's determinations. We dismissed the Petitioner's appeal.

In our prior decision dismissing the appeal, incorporated by reference here, we noted that the SIJ order stated that the Petitioner's reunification with one or both of his parents was not viable due to "the neglect of child by the mother and father." However, the order stated that the Family Court's findings were "in accordance with" federal immigration law under section 101(a)(27)(J) of the Act, rather than any provision of New York state law, and consequently, we concluded that the Petitioner did not establish that the Family Court made a qualifying parental reunification finding under state law, as required. Further, we noted that USCIS' consent was not warranted in this case because the Petitioner had not demonstrated that the Family Court made a qualifying parental reunification determination and had not demonstrated a reasonable factual basis for the Family Court's parental reunification and best interest determinations. While the Family Court determined that the Petitioner's reunification with one or both of his parents was not viable due to their neglect and that it was not in his best interest

[4] We use initials to protect identities.

to be returned to India, the record did not demonstrate the facts relied upon by the court to make such determinations as the court orders did not include factual findings by the court and the record lacked any additional evidence, such as supporting documents submitted to the Family Court, transcripts or other documentary evidence establishing the factual basis for the Family Court's parental reunification and best interest determinations.

On motion, the Petitioner submits an *Amended Order – Special Findings* (amended SIJ order) in which the Family Court specifies that the Petitioner's father neglected him as defined under New York case law. The Petitioner also submits the underlying documents presented to the Family Court in support of the court orders—*Notice of Motion for Special Findings Order*, *Affirmation*, and the special findings of fact for SIJ status. This new evidence, submitted on motion, establishes the factual basis for the Family Court determinations that the Petitioner's reunification with his parents was not viable due to neglect and abandonment and his return to India was not in his best interest.

Based on the underlying documents presented to the Family Court and the amended SIJ order, the Petitioner now has met his burden to establish that the court made a qualifying parental reunification determination and best interest determination under New York law, as well as demonstrate the factual basis for the court's determinations. Nevertheless, the record on motion does not establish the Petitioner's eligibility for SIJ classification.

A. Evidence of the Petitioner's Marriage

The Petitioner remains ineligible for SIJ classification as the record indicates he is now married. To be eligible for SIJ classification, a petitioner must show, in part, that they are unmarried. Section 101(a)(27)(J) of the Immigration and Nationality Act (the Act); 8 C.F.R. § 204.11(b)(2). Furthermore, the petitioner must be eligible for the requested benefit at the time of filing the benefit request *and must continue to be eligible through adjudication*. 8 C.F.R. § 103.2(b)(1) (emphasis added).

During adjudication of this motion, we issued a notice of intent to dismiss (NOID) indicating that, according to information USCIS obtained from an International Information Sharing program with the government of Canada, the Petitioner had filed a permanent resident application as a spouse under the family class in Canada in 2021. We notified the Petitioner that because the record indicates that he is now married, he is no longer eligible for SIJ classification under section 101(a)(27)(J) of the Act.[5] In response to the NOID, the Petitioner submits additional evidence, including a new statement, a Certificate of Marriage between him and S-K-, dated [redacted] 2021, confirming that the marriage ceremony was held according to the [redacted], and signed by the President and Head Priest of The [redacted] Inc., photos of their marriage ceremony, copies of several pages from his passport, copies of several pay stubs, and copies of some sections of New York law. He acknowledges that he and S-K- were married in [redacted] 2021 in a religious ceremony at The [redacted] Inc. in [redacted] New York, performed by a priest in the temple. He states that their marriage, however, "is not a legal marriage under New York law, where it took place," because they did not obtain a marriage license before their marriage ceremony, as is required by New York law. He further states that the person who performed the marriage ceremony was not registered with the clerk of the city of

[5] The NOID also addressed the Petitioner's physical presence in the United States as required by 8 C.F.R. § 204.11(b)(3) (requiring that SIJ petitioners be physically present in the United States).

New York, as is also required by New York law. Furthermore, the Petitioner contends that the fact that the law in Canada accepts his and S-K-'s religious ceremony as a valid marriage does not change the fact that there is no legal marriage between them in the United States. In a personal statement, the Petitioner asserts that he and S-K- were aware that their marriage was not legally recognizable in the state of New York, but for their purposes, "entering into this religious marriage was enough." He states that, according to their culture and tradition, and in the eyes of their parents and friends, the marriage ceremony in [redacted] 2021, which was held at The [redacted] "makes them husband and wife and free to have [a] conjugal relationship." He further states that without this marriage ceremony, their relationship would not have been accepted by their families. Finally, the Petitioner specifically states that he did not want to enter into a legal marriage because he knew that if he were to enter into a legal marriage, he was no longer going to be eligible for SIJ classification.

The Petitioner has not established that his religious marriage ceremony is not a legal marriage in the state of New York as he asserts. Consistent with the Petitioner's assertion, section 13 of the New York Domestic Relations Law (N.Y. Dom. Rel. Law) requires that all persons intending to be married in New York state are to obtain a marriage license and deliver said license to the clergyman or magistrate who is to officiate before the marriage ceremony may be performed. However, N.Y. Dom. Rel. Law section 25 specifically states that failure to procure a marriage license does not render void any marriage solemnized between persons of full age. Here, the Petitioner and S-K- celebrated a religious marriage ceremony performed by a priest in the [redacted] and as reflected in the Petitioner's NOID statement on motion here, they considered and represented themselves as married and their families, friends, and community in turn considered them a married couple in the course of their daily lives. Most notably, although he claims his religious marriage ceremony did not constitute a valid marriage under New York state law, the record shows the Petitioner represented himself has lawfully married to the Canadian government when he filed a permanent resident application as the lawful spouse under the family class in Canada based on that religious ceremony. However, the Petitioner has not offered any legal authority or evidence in support of his assertion that his religious marriage ceremony in New York, although not recognized as legal in New York, is considered a valid marriage for the purposes of obtaining immigration benefits or status in Canada. As such, the Petitioner has not demonstrated that he is not lawfully married to S-K-.

Accordingly, the Petitioner has not demonstrated by a preponderance of the evidence that he is unmarried, and he is therefore ineligible for SIJ classification under section 101(a)(27)(J) of the Act. 8 C.F.R. § 204.11(c).

B. Physical Presence in the United States

In our NOID, we also addressed evidence indicating the Petitioner is not physically present in the United States, as required by 8 C.F.R. § 204.11(b)(3), and the Petitioner submits additional evidence to demonstrate that he has remained in the United States. However, as our findings that the Petitioner is married and therefore ineligible for SIJ classification is dispositive of his motions, we decline to reach and hereby reserve the Petitioner's arguments on this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 a Petitioner is otherwise ineligible).

III. CONCLUSION

As discussed above, the Petitioner has not demonstrated that he is eligible for SIJ classification.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.