U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16620601

DATE: APR. 11, 2022

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 Director of the Long Island, New York Field Office (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed the Petitioner's subsequent appeal. The matter is now before us on a combined motion to reopen and motion to reconsider. 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). Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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) of the Act; 8 C.F.R. § 204.11(c). 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. 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).

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 the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019), at 5-6. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. The petitioner bears 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).

In our prior decision, incorporated here by reference, we determined the Petitioner, a native and citizen of India, had not met his burden of establishing that the [redacted] Family Court in New York (Family Court) made a qualifying determination that parental reunification is not viable, as section 101(a)(27)(J)(i) of the Act requires. Specifically, we concluded the SIJ order did not cite or reference any New York child welfare law under which it made its determination, and the Petitioner did not provide us with any underlying documentation that was submitted and considered by the Family Court. We noted that although the Petitioner argued that his parents stated that they were unable to provide him with emotional and financial support and had no intention of doing so, he did not submit the waivers to us on appeal for review. The Petitioner also argued, through an affidavit from his attorney, the contents of the waivers showed that the Petitioner was abandoned as prescribed by New York Social Services Law section 384(b)(5)(a), however, did not contend, and the evidence did not demonstrate, his counsel's affidavit was submitted to and reviewed by the Family Court prior to issuing the SIJ order. Therefore, we held that although his guardianship order established the Family Court appointed a guardian for the Petitioner under section 661 of the N.Y. Fam. Ct. Act and section 1707 of the N.Y. Surr. Ct. Proc. Act, the SIJ order cites only federal immigration law and does not reference state law, as section 101(a)(27)(J)(i) of the Act requires.

On motion, the Petitioner submits the waivers from the Petitioner's parents and continues to argue that the parental reunification determination was made under New York law. The Petitioner also submits the motion and memorandum of law underlying the SIJ proceedings. He contends that we erred in holding that the SIJ order did not contain a qualifying parental reunification finding since the guardianship order cites to section 1707 of the N.Y. Surr. Ct. Proc. Act and the Family Court therefore had broad discretion and jurisdiction to make best interest determinations. While we acknowledge that the guardianship order establishes the Family Court appointed a guardian for the Petitioner under both section 661 of the N.Y. Fam. Ct. Act and section 1707 of the N.Y. Surr. Ct. Proc., we underscore that they only relate to best interest determinations, and do not relate to the parental reunification determination. Additionally, while the two waivers from the Petitioner's parents were reviewed and contemplated by the Family Court, they do not specify any New York law that would demonstrate the state law under which the Family Court made its parental reunification determination. Finally, neither the motion nor the memorandum of law underlying the SIJ proceedings cite to state law that would substantiate the parental reunification determination, and only cite federal immigration law.

The Petitioner also discusses the USCIS' policy manual in support of his argument that we should have considered his affidavit submitted on appeal, in conjunction with his appeal brief, as supplemental evidence establishing that the parental reunification determination was made under New York Social Services Law section 384(b)(5)(a). *See* 6 *USCIS Policy Manual* J.3(A)(1), https://www.uscis.gov/policymanual. However, contrary to the Petitioner's argument, the USCIS policy manual states that the documents must have been submitted to the juvenile court prior to the issuance of the SIJ order and "[m]ere copies of, or references to, state law(s), and/or briefs or legal arguments drafted in response to a request for evidence provided on their own, *may not be sufficient unless supported by evidence that the court actually relied on those laws when making its determinations*. *Id* (emphasis added). Here, the Petitioner submitted his counsel's affidavit to us on appeal and did not submit it to the Family Court prior to issuing the SIJ order. Even if the Petitioner had submitted his counsel's affidavit to the Family Court, it did not cite to any New York law and would not therefore establish the state law basis of the parental reunification determination. Consequently, we find no error in our determination that the Petitioner did not meet his burden of

establishing that the Family Court made a qualifying determination that parental reunification is not viable, as section 101(a)(27)(J)(i) of the Act requires.

We acknowledge the Applicant's arguments and his submission of additional evidence. However, he has not provided documentary evidence of new facts sufficient to establish his eligibility or established that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision. Consequently, on motion, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.