U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 04814054

DATE: JUL. 18, 2022

Appeal of Long Island, New York Field 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 (SIJ petition) and the Petitioner appealed that decision to the Administrative Appeals Office (AAO). Subsequent to the filing of the appeal, the District Court for the Southern District of New York issued a judgment in *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019). Pursuant to that decision, the Petitioner has overcome one of the denial grounds. Nevertheless, upon *de novo* review, we will dismiss the appeal because the Petitioner has not demonstrated that he merits U.S. Citizenship and Immigration Services (USCIS) consent to SIJ classification.

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).

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

In [redacted] 2016, when the Petitioner was 20 years old, the New York Family Court for [redacted] (Family Court) appointed guardianship of the Petitioner to S-K-,[1] finding that such appointment "shall last until the [Petitioner's] 21st birthday." On the same day, the Family Court issued a separate order titled *ORDER-Special Immigrant Juvenile Status* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was "dependent upon the Family Court." The Family Court further found that the Petitioner's reunification with his father was not viable due to abandonment, and that it was not in his best interest to be removed from the United States and returned to [redacted] his country of nationality.

Based on the Family Court orders, the Petitioner filed this SIJ petition in March 2016. The Director issued a notice of intent to deny (NOID) stating that the SIJ order did not demonstrate the Family Court made a qualifying parental reunification determination or a qualifying best interest determination. The Director also indicated that the Family Court did not make an informed decision, and USCIS' consent was not warranted. The Petitioner responded timely with a brief. In December 2018, the Director denied the SIJ petition for reasons set forth in the NOID.

On appeal, the Petitioner submits a brief reasserting his eligibility for SIJ classification.

B. S.D.N.Y. Judgment and Applicability to the Petitioner

In *R.F.M. v. Nielsen,* the district court determined that USCIS erroneously denied plaintiffs' SIJ petitions based on USCIS' determination that New York Family Courts lack jurisdiction over the custody of individuals who were over 18 years of age. 365 F. Supp. 3d at 377-80. The district court also held that USCIS erroneously required that the New York Family Court have authority to order the return of a juvenile to the custody of the parent(s) who abused, neglected, abandoned or subjected the juvenile to similar maltreatment in order to determine that the juvenile's reunification with the parent(s) was not viable pursuant to section 101(a)(27)(J)(i) of the Act. *Id.* at 378-80.

The district court granted the plaintiffs' motion for summary judgment and for class certification. The court's judgment certified a class including SIJ petitioners, like the Petitioner in this case, whose SIJ orders were "issued by the New York family court between the petitioners' 18th and 21st birthdays" and whose SIJ petitions were denied on the ground that the Family Court "lacks the jurisdiction and authority to enter SFOs [Special Findings Orders] for juvenile immigrants between their 18th and 21st birthdays." *R.F.M. v. Nielsen*, Amended Order, No. 18 Civ. 5068 (S.D.N.Y. May 31, 2019).

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

Here, the record establishes that the Petitioner is a member of the *R.F.M. v. Nielsen* class. In accordance with the district court's orders in that case, the Family Court was acting as a juvenile court when it appointed a guardian for the Petitioner and declared him dependent on the Family Court, and the order therefore contains a qualifying parental reunification finding.

C. USCIS' Consent is Not Warranted

To warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.*

The Director determined the Petitioner does not merit USCIS' consent to SIJ classification as the record lacked a reasonable factual basis for the Family Court's best interest determination. The Director found there was no evidence the family court contemplated the availability of other caregivers in India for the Petitioner in rendering its best interest determination. On appeal, the Petitioner asserts the Family Court had a reasonable factual basis for its best interest determination, and we agree. The SIJ order was issued "after examining the motion papers and supporting affidavits, all the pleadings and prior proceedings in this matter, and/or hearing testimony." While not explicitly contained in the SIJ order, the underlying brief submitted to the Family Court states that it is not in the Petitioner's best interest to return to India "because such a return would place him in a country with a parent who is unable to care and provide for him and deplorable living conditions." The brief goes on to contend that "based on the availability of an exemplary home in the United States and the lack of a safe and secure home in India, it is not in [the Petitioner's] best interest to be returned to India." Accordingly, the record demonstrates the record contains a reasonable factual basis for the Family Court's best interest determination.

However, the Director also held that USCIS' consent is not warranted because the Petitioner made statements to U.S. Customs and Border Patrol (CBP) that were inconsistent with his affidavit in his SIJ proceedings. In 2013, when entering the United States, the Petitioner provided a sworn statement to CBP that stated his father was killed in 2006 by his uncles who are members of an opposing political party. In support of his SIJ proceedings before the Family Court, the Petitioner submitted an affidavit stating that his father abandoned him in 2008, and he did not know if his father was dead or alive. Due to these inconsistent statements, the Director could not conclude that the Petitioner's SIJ petition was bona fide. On appeal, the Petitioner, through counsel, argues that the statements are not inconsistent because the statement he gave CBP was based on a rumor the Petitioner heard, and did not know the

exact whereabouts of his father.[2] Even if the arguments made by Petitioner's counsel were substantiated with independent evidence, it does not explain why he told CBP his father was killed in 2006, and then told the Family Court that his father abandoned him in 2008. Therefore, the Petitioner's sworn statement to CBP materially conflicts with the testimony provided in order to meet the eligibility requirement of a qualifying parental reunification determination. As such, the record reflects by a preponderance of the evidence that the request for SIJ classification was not bona fide, and USCIS' consent to a grant of SIJ classification is not warranted. *See* 8 C.F.R. § 204.11(b)(5).

III. CONCLUSION

As discussed above, the Petitioner has not demonstrated that he warrants USCIS' consent to a grant of SIJ classification. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.

[2] Assertions of counsel do not constitute evidence and must be substantiated in the record with independent evidence, which may include affidavits and declarations. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (unsupported statements in brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988).