U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23222555

Date: JUN. 9, 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 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 judgment, the Petitioner has established his eligibility and 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

In [redacted] 2016, when the Petitioner was 18 years old, the [redacted] Family Court in New York issued an order appointing the Petitioner's father as his guardian in guardianship proceedings brought under section 661 of the New York Family Court Act and section 1707 of the New York Surrogate's Court Procedure Act. The order stated that "the appointment shall last until the [Petitioner]'s 21st birthday . . . ." In a separate order issued the same day and titled *ORDER FOR SPECIAL FINDINGS* (SIJ order), the Family Court determined, 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 in that the Court has accepted jurisdiction over the matter of his guardianship and has made a factual determination that his Mother have [*sic*] effectively relinquished control over him." Additionally, the Family Court found that the Petitioner's reunification with his mother was not viable due to abuse and abandonment, and that it would not be in the Petitioner's best interest to be removed to El Salvador, his country of origin. The underlying memorandum of law submitted to the Family Court specified that the Petitioner's mother abused and abandoned him as those terms are defined in the New York Social Services Law and the New York Family Court Act, and provided additional facts that formed the basis for the Family Court's determinations.

Based on the Family Court's orders, the Petitioner filed his SIJ petition in December 2016. The Director denied the petition, finding that the Family Court was not acting as a juvenile court, which is defined in 8 C.F.R. § 204.11(a) as a court with "jurisdiction under state law to make judicial determinations about the custody and care of juveniles." The Director concluded that as the Petitioner was 18 years old and had attained the age of majority in New York when the orders were granted, the Family Court did not have jurisdiction under New York law over the Petitioner's custody as a juvenile and the guardianship issued upon his consent was not equivalent to a qualifying custodial placement.

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 350, 377-80 (S.D.N.Y. 2019). Because the plain language of the Act requires either a dependency declaration or a custodial placement and the New York Family Court guardianship orders rendered the plaintiffs dependent upon the family court, the district court held that USCIS exceeded its statutory authority in requiring New York Family Courts to nonetheless have jurisdiction over a juvenile's custody in order to qualify as juvenile courts under the SIJ provisions of section 101(a)(27)(J) of the Act. *Id.* The district court also found that guardianships issued under FCA section 661 were judicial determinations about the custody and care of juveniles, pursuant to the definition of juvenile court at 8 C.F.R. § 204.11(a). *Id.* at 378. The district court 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).

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.

III. CONCLUSION

The Petitioner has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification. The Director's decision is withdrawn and the appeal is sustained.

ORDER: The appeal is sustained.