U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20616945

Date: NOV. 07, 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 National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed the subsequently filed appeal. The matter is now before us on motion to reconsider.

Upon review, we will dismiss the motion to reconsider.

I. LAW

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)(i) of the Act; 8 C.F.R. § 204.11(b).[1] 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

[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).

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

In denying the Petitioner's SIJ petition, the Director determined that the Petitioner had not satisfied his burden to establish that the record contained a qualifying dependency determination, as required at section 101(a)(27)(J)(i) of the Act. In our decision, incorporated here by reference, we concluded that the Petitioner had overcome the Director's ground for denial. However, after issuing a notice of intent to deny (NOID) advising the record reflected that USCIS' consent was not warranted and considering the Petitioner's response, we dismissed the appeal on this ground. Specifically, we determined that the Petitioner had not established that a primary purpose that he sought SIJ classification was for relief from parental maltreatment because there was no evidence that the *ORDER OF DECLARATORY JUDGMENT AND FINDINGS* (declaratory judgment), issued by the District Court for the [redacted] Judicial District in [redacted] Texas (District Court) when the Petitioner was 16 years old, was sought to compel an action that provided "relief from abuse or neglect," or abandonment. H.R. Rep. No. 105-405, at 130; 6 *USCIS Policy Manual* J.2(D)(F), www.uscis.gov/policy-manual (explaining that the court-ordered dependency or custodial placement of the child is the relief being sought from the juvenile court).

On motion, the Petitioner contends that we erred in determining that consent was not warranted. He asserts, through counsel, that, because we determined that the record included a qualifying dependency determination, and the *USCIS Policy Manual* explains that dependency is the relief being sought from the juvenile court, our determination constitutes a failure to apply USCIS policy guidance consistently and is therefore arbitrary and capricious. Here the Petitioner misconstrues our analysis. In our decision we explained that the Petitioner had not offered evidence of the relief actually ordered by the District Court. Specifically, we advised the Petitioner that the record lacked evidence indicating that the District Court took jurisdiction over him in any other prior or related proceeding providing him with any other type of relief from parental maltreatment under Texas law. Absent such evidence, we determined that the Petitioner had not satisfied his burden to demonstrate, by a preponderance of the evidence, that the District Court's orders were primarily sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis to these grounds. Upon review, we note that the record also lacks other evidence showing that the District Court issued any orders or referrals to support the Petitioner's health, safety, or welfare as relief from parental maltreatment, apart from the special findings enabling him to seek SIJ classification before USCIS. *See* 6 *USCIS Policy Manual*, *supra*, at J.2(C)(1) n.12 (citing to U.S. Department of Health and Human Services documentation and *Budhathoki v. Nelson* 898 F.3d 504, 513 (5th Cir. 2018), and explaining that "[i]f the court is providing relief through child welfare services, the order or supplemental evidence should reference what type of services or supervision the child is receiving from the court[,]" such as "psychiatric, psychological,

educational, occupational, medical or social services, services providing protection against trafficking or domestic violence, or other supervision by the court or a court appointed entity."). The Petitioner therefore has not shown how our decision was erroneous based upon the evidence in the record of proceedings at the time of our decision.

On motion, the Petitioner cites to *Budhathoki v. Nelson* 898 F.3d 504 and *Matter of E-A-L-O-*[2] in support of his contention that we did not uniformly apply the *USCIS Policy Manual* in our decision. He reiterates that both of these cases are distinct from his own as we determined that the SIJ order in his case contained the requisite determinations made under state law. He reiterates his contention that, as a qualifying dependency determination was made in his case, and the *USCIS Policy Manual* states that dependency is the relief being sought from the juvenile court, we did not apply USCIS policy equally in our decision determining that USCIS consent was not warranted. Notwithstanding these assertions on motion, we acknowledged in our prior decision that the record contained the requisite determinations, including the dependency determination. We concluded, however, that the record nonetheless lacked evidence demonstrating that the District Court ordered relief from parental mistreatment such that USCIS' consent was warranted. *See Matter of Chawathe,* 25 I&N Dec. 369 at 375 (stating that "a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought."). The Petitioner accordingly has not shown that our decision was incorrect based on law or policy.

The Petitioner also contends on motion that *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) does not support our conclusion that USCIS' consent is not warranted because, in contrast to the appellant in *Reyes v. Cissna*, he provided evidence sufficient to establish a reasonable factual basis for each of the requisite determinations and demonstrated that the District Court had been provided sufficient evidence to make an informed decision such that USCIS' consent to his request for SIJ classification is warranted. In our decision, we concluded that the record included a reasonable factual basis for each of the District Court's determinations. However, we concluded that USCIS' consent was not warranted in his case because the Petitioner had not provided evidence sufficient to establish that the District Court ordered a form of relief from parental mistreatment. For this reason we concluded that the Petitioner had not demonstrated by a preponderance of the evidence that a primary reason that he sought the declaratory order was for such relief. As we indicated in our decision, the *Reyes* court found that USCIS properly withheld consent from an SIJ petition unsupported by sufficient evidence that the juvenile sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit. *See Reyes v. Cissna*, 737 Fed. Appx. 140 at 145. The Petitioner's argument therefore does not show how *Reyes v. Cissna* fails to support our conclusion in his case.

[2] We note that *Matter of E-A-L-O-* was controlling at the time we issued our decision. However, the Petitioner should note that the U.S. 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). In June 2022, USCIS issued a Policy Alert advising that the *USCIS Policy Manual* had been updated to incorporate changes from this final rule and that the final rule and this policy guidance superseded *Matter of E-A-L-O-*. Adopted Decision 2019-04 (AAO Oct. 11, 2019). *See* USCIS Policy Alert PA-2022-14, *SUBJECT: Special Immigrant Juvenile Classification and Adjustment of Status*, https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf.

For the foregoing reasons, the Petitioner has not established on motion that our decision was based on an incorrect application of law or policy and was incorrect based on the evidence in the record of proceedings at the time of the decision.

ORDER: The motion to reconsider is dismissed.