U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20720905

Date: JUL. 11, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the record did not establish that a state juvenile court made a qualifying determination that the Petitioner's reunification with one or both of his parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner 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). The petitioner 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 petitioner's 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).

SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (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 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [ ] 2017, the Fifth District Juvenile Court in [ ] Utah (juvenile court) issued an *Order of Appointment of Guardianship* (guardianship order), appointing D-B-[1] as the Petitioner's permanent guardian. The juvenile court indicated that the Petitioner's mother left him in an orphanage in Ethiopia when he was seven[2] years old and signed a document relinquishing her parental rights. Based on testimony presented, the juvenile court determined that the Petitioner had not been in contact with his mother and she had not provided for his basic needs since 2009. The juvenile court noted that D-B- visited the Petitioner at the orphanage in Ethiopia and offered to help him obtain a student visa in order to study in the United States. According to the guardianship order, the Petitioner then unexpectedly lost his place in the orphanage by coming to the United States and would have nowhere to live if he were to return. Therefore, the juvenile court declared him to be a neglected and dependent child under Utah law and found that it would not be in his best interest to return to Ethiopia.

Based on the guardianship order, the Petitioner filed his SIJ petition. The Director denied the SIJ petition on the ground that the guardianship order does not contain a judicial determination that the Petitioner's reunification with one or both of his parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires. In October 2022, we issued our first notice of intent to dismiss (NOID), informing the Petitioner that the record contains derogatory information which affects his eligibility for SIJ classification. After considering the Petitioner's response to our first NOID, we issued a second NOID in May 2023 to advise him of additional derogatory information in his case. The Petitioner did not respond to our second NOID. Accordingly, we now issue this decision based on the evidence in the record.

B. Qualifying Parental Reunification Determination

The Petitioner has overcome the Director's ground for denial because the record as supplemented on appeal shows that the juvenile court made a qualifying parental reunification determination, as required under section 101(a)(27)(J)(i) of the Act.

---

[1] We use initials to protect privacy.

[2] We mentioned in our first notice of intent to dismiss that the Petitioner would have been seven years old between October 2007 and October 2008 but that the guardianship order and other evidence indicated that his mother had last contacted and provided for him in 2009. In response, he provided affidavits from two orphanage officials and one other person who knew him during the time he claims to have lived at the orphanage, between 2009 and 2016. He also submitted a personal affidavit stating he did not know his exact age when residing at the orphanage and thought he was around seven years old when he arrived, but learned his true age when he obtained his birth certificate during the process of applying for a student visa. The Petitioner has submitted sufficient evidence to resolve the discrepancy about his age at the time he claims his mother left him at the orphanage in 2009.

On appeal, the Petitioner submits an *Order on Motion to Clarify Order of Appointment of Guardianship Nunc Pro Tunc* (clarifying order), which specifies that the juvenile court finds that "[r]eunification with one or both parents is not viable due to abuse, neglect, or abandonment, or similar basis found under State law." When read in conjunction, the clarifying order and the original guardianship order, which indicates that the Petitioner is a "neglected and dependent child" pursuant to Utah Code Annotated sections 78A-6-105(11), (27), (28), and 78A-6-103(1)(c), provide a sufficient parental reunification determination. Accordingly, a preponderance of the evidence shows that the juvenile court made a qualifying determination that the Petitioner's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required.

However, the Petitioner has not provided satisfactory evidence to resolve derogatory information in his case, as we will discuss, and therefore has not established his eligibility for SIJ classification.

C. USCIS' Consent is Not Warranted

The Petitioner has not met his burden of showing by a preponderance of the evidence that USCIS' consent to his SIJ classification is warranted. As stated, SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. For USCIS to consent, the request for SIJ classification must be bona fide, which requires the petitioner to establish that a primary reason for seeking the juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. 8 C.F.R. § 204.11(b)(5). USCIS may 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. *Id.*

On appeal, the Petitioner submits a transcript of proceedings before the juvenile court in [redacted] 2017. The transcript shows that counsel informed the court that the Petitioner had resided in an orphanage since his mother left him there in 2009, "had no contact with his family for an extended period of time," and would have nowhere to live if he returned to Ethiopia.

In our first NOID, we informed the Petitioner that government records indicate that D-B- assisted him in obtaining an F-1 nonimmigrant student visa in 2016. During the F-1 visa application process, the Petitioner and D-B- were informed about the rules relating to the F-1 visa and that it would not allow him to remain permanently in the United States. In an interview with an official of the U.S. Department of State (DOS) for his first F-1 visa application on April 18, 2016, the Petitioner was unable to explain how he knew his sponsors (D-B- and her spouse) but stated that they had offered to pay for his schooling since his "mother could not pay." The Petitioner indicated on his first application that he resided at [redacted] Ethiopia. The first application was refused. The Petitioner filed a second F-1 visa application on May 3, 2016, this time listing his address as [redacted] and stated during the interview that he was currently living with his mother. The second application was refused. The Petitioner applied a third time on May 25, 2016, indicating that he again resided at [redacted], and the visa was granted. During his interview relating to his third application, the DOS official asked the Petitioner "several questions . . . about his own family" and he expressed "no apparent intent to leave his family . . . ."

As we discussed in our first NOID, the Petitioner's claims to the DOS about his residence and ongoing relationship with his mother at the time of his F-1 visa applications in 2016 is materially inconsistent with the evidence presented to the juvenile court that he was last in contact with his mother in 2009 and that he was in need of a guardian because his mother left him at an orphanage, relinquished her parental rights, and never provided for him again.

Counsel states in a response brief to our first NOID that the [redacted] address the Petitioner listed on his second visa application corresponded to the orphanage, while the address on the other two visa applications was his mother's address. In response to the NOID, the Petitioner submits affidavits from two orphanage officials and a tutor, all of whom state they knew him at the time he claims to have lived at the orphanage from 2009 to 2016. He also provides a personal affidavit in which he states that he was living at the orphanage when he applied for his student visa and that his interview statement that he had no intention of leaving his family was a reference to his sister who lived there with him. Also, he states he listed his mother's address on his visa application because he thought he should provide "the last known address [he] was living at before [he] came to the orphanage," and his mother's residence was his last "'home' environment address." However, the Petitioner has not explained why a misunderstanding of the question would lead him to list his mother's address on only the first and third visa applications while listing the orphanage address on the second application. Additionally, despite listing the orphanage address on the second visa application, he stated during the interview relating to that application that he was currently living with his mother. His statement that he was living with his mother was consistent with his notations on the first and third visa applications that he resided at what he now states was her address, [redacted] In response to our NOID, the Petitioner also provides a link to a publicly available article from the archives of a local news outlet in Utah (S-G- News article) about his journey from Ethiopia to the home of D-B- and her family. The article states in part that the Petitioner's mother "lives six hours away from the orphanage where he grew up." It is unclear why the Petitioner still considered his mother's residence six hours away to be his "last 'home' environment address" in 2016 when he claims to have been living continuously at the orphanage since 2009 without any contact with his mother. He also does not explain the basis for his belief that the F-1 visa application required a prior address rather than his present address, where he would have been residing for six or seven years by the time of his visa applications.

The Petitioner also states in his affidavit in response to our first NOID that he is not sure whether he understood the questions during his visa interview because of his English skills at the time, and that the "embassy worker had a Chinese accent." However, the Petitioner attended three separate interviews and does not indicate whether communication issues relating to the interviewer's accent or other concerns occurred during all three or only one of the interviews. Further, while the notes relating to the second interview state that his ability to communicate in English was limited, notes for the third interview indicate that his ability to converse in English was good and that he was capable of answering a range of questions. Accordingly, the Petitioner's explanation about his statements during an interview does not sufficiently explain the information he repeatedly provided to indicate that he resided with his mother at her address in 2016.

Moreover, as we discussed in our first NOID, publicly available information online indicates that upon arrival in the United States, the Petitioner began using the name K-B-, with the surname of D-B- and her family (the B- family), and calling D-B- and her spouse "mom and dad." The S-G- News article he provides also shows that the B- family's community in Utah held a "welcome home" celebration,

and other publicly available online information refers to him as the B- family's "adopted son." In response, the Petitioner states in his affidavit that he asked if he could call D-B- "mom" because he "longed for belonging, for parental figures in [his] life" and he felt at home with her family. He also submits an affidavit from D-B- stating that she and her spouse did not intend to adopt the Petitioner but just wanted to help him get an education. She notes that she did not say no when the Petitioner asked to call her and her spouse "mom and dad" because she wanted to offer him love and security, and that she has called him her son "many times as a term of endearment and not a reflection of [her] intention to adopt him." D-B- further states that she is unaware of any posts referring to him as her adoptive son, and that a local news article may have referred to him that way but she did not control the content of the article and asked that it be removed after it was published with "other false information." Although D-B- alleges the article contained incorrect information and she could not influence the author's perception of her intentions, the S-G- News article to which the Petitioner provides a link includes photographs and a video of the "welcome home" party the B- family's community held upon the Petitioner's arrival, and the Petitioner, D-B-, and her spouse are shown discussing their family relationship.

Furthermore, as we discussed in our second NOID, at the end of the S-G- News article there appears a sentence which states, "Learn more about the [B-] family's trip to Ethiopia . . . here," and provides a link to another publicly available article (second publication). The second publication states that D-B-, her spouse, and two of their children traveled to Ethiopia in May 2016 with an advocacy organization. It mentions that the family had already been financially sponsoring the Petitioner in order to provide him with an education and basic necessities. The second publication states that during their May 2016 visit, the B- family "met [the Petitioner's] mom, sister, and brother," who were "so thankful that [he] gets this opportunity to be sponsored," and took the Petitioner's mother and siblings out for dinner at a restaurant. The S-G- News article contains a May 2016 photograph of D-B-, her family, and the Petitioner seated together at a table in a restaurant in Ethiopia with a woman, a man, a young woman, and a child. This photograph is consistent with the statement in the second publication that the B- family took the Petitioner's mother, sister, and brother out for dinner at "a traditional Ethiopian restaurant" during their May 2016 visit. This information materially conflicts with the Petitioner's sworn affidavit in response to our first NOID, in which he states in part that after he went to the orphanage in 2009, he had no way "to ever see, or try to find [his] mom again." He also claims that he "heard through friends . . . that [his] mom has asked about [him]," but he "ha[s] not communicated directly with her."

Accordingly, as we had done in our first NOID, we again notified the Petitioner in our second NOID that due to material inconsistencies, the evidence does not support a finding that his SIJ petition is bona fide as he has not established that a primary reason he sought the juvenile court's order was to obtain protection from parental maltreatment, as the regulation at 8 C.F.R. § 204.11(b)(5) requires. We gave him an opportunity to respond and explain this additional derogatory information, but as of the date of this decision we have not received a reply.

As we discussed in our NOIDs, the Petitioner's claims to DOS officials that he lived with his mother as of the time of his May 2016 visa interview and had no intent to leave his family conflict with testimony before the juvenile court that he "had no contact with his family for an extended period of time." Further, the information he provided in support of his F-1 visa application regarding his residence with his mother and ongoing connection to his family in May 2016 is inconsistent with the

juvenile court's findings in the guardianship order that his mother relinquished her parental rights when she left him at an orphanage when he was a young child and that "there has been no contact between [the Petitioner and his] mother . . . and his basic needs have not been provided by his mother since 2009." Moreover, the Petitioner has not provided a sufficient explanation for the publicly available online publications that indicate the Petitioner's intention to join the B- family permanently through the F-1 visa process, and the discrepancies between those articles and the Petitioner's own sworn statement that he has been unable to locate or communicate with his mother since 2009. The record contains material inconsistencies between the evidence that formed the basis for the juvenile court's determinations, the information presented to the DOS, and publicly available online materials. Despite two opportunities to address the derogatory information in the record and explain the noted discrepancies, the Petitioner has not sufficiently done so. Accordingly, the evidence does not support a finding that the SIJ petition is bona fide, and the Petitioner has not established that a primary reason he sought the juvenile court's order was to obtain protection from parental abuse, neglect, abandonment, or a similar basis under state law, as the regulation at 8 C.F.R. § 204.11(b)(5) requires in order to merit USCIS' consent to his SIJ classification.

III. CONCLUSION

The Petitioner has not met his burden of establishing by a preponderance of the evidence that USCIS' consent to his SIJ classification is warranted. As a result, he has not established his eligibility.

ORDER: The appeal is dismissed.