U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 2434601

Date: OCT. 17, 2023

Appeal of New York District Office 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). SIJ classification protects noncitizen children in the United States who cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. The Director of the New York District Office (Director) denied the Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the record did not establish that the state court that issued the SIJ findings in this case had exercised its jurisdiction over the Petitioner as a juvenile when it issued those findings, and therefore he was not eligible for SIJ classification. The Director also concluded that the best interest and reunification determinations made by the state court were legally deficient. The Director last concluded that, based on material inconsistencies in the record, the Petitioner did not merit U.S. Citizenship and Immigration Services (USCIS) consent. The matter is now before us on appeal. 8 C.F.R. § 103.3. We subsequently issued a Notice of Intent to Dismiss (NOID) the appeal.

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, 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

[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).

that it is not in the petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. 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).

II. ANALYSIS

The Petitioner claims that he was born in Vietnam in [redacted] 1997. The record indicates that he last entered the United States in February 2015 as an F-1 student. In [redacted] 2017, when the Petitioner asserts that he was 20 years old, the New York Family Court for [redacted] County (Family Court) appointed M-N-[2] as the Petitioner's guardian pursuant to proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate's Court Procedure Act (N.Y. Surr. Ct. Proc. Act). The guardianship order stated that "the appointment shall last until the [Petitioner's] 21st birthday . . . ." In a separate order titled *ORDER* – SPECIAL JUVENILE STATUS (SIJ order), also issued in November 2017, the Family Court determined, among other findings, that the Petitioner was "dependent upon the family court." The Family Court also found that the Petitioner's reunification with his father and mother was not viable due to abuse, neglect, and abandonment under New York law. The Family Court cited to section 384-B of the New York Social Services Law (N.Y. Soc. Serv. Law), which defines an abandoned child, and *Matter of Alamgir A.*, 81 AD3d 937, 938-939 (2011) (discussing an amended order addressing the Family Court's obligation to issue the factual findings required for an SIJ petition), in support of this finding. The SIJ order included the court's factual findings that the Petitioner's father had "failed to provide for the care and custody of [the Petitioner]," "to financially and emotionally support him," and "to provide for food, clothing, shelter, education and medical needs." In addition, the Family Court concluded that it would not be in the Petitioner's best interest to return to Vietnam, his country of nationality or last habitual residence, because "there is no one who is able or willing to care for [him] for him" and "to provide [him] with a safe home and to provide for his needs."

In December 2017, the Petitioner filed his petition for SIJ classification based on the Family Court orders. The Director subsequently denied the SIJ petition, stating that although the Petitioner was 20 years old when he obtained the SIJ order (based on his claim to have a date of birth in [redacted] 1997), the Family Court did not have jurisdiction over the Petitioner as a juvenile under state law when it issued the SIJ order because he was over the age of 18 years. The Director also concluded that the best interest and reunification determinations in the SIJ order were legally deficient and that USCIS' consent to the Petitioner's request for SIJ classification was not warranted because the record

[2] We use initials to protect identities.

contained material inconsistencies regarding the Petitioner's claimed lack of relationship with his biological father, indicating that the Petitioner's primary purpose in seeking the juvenile court order was to obtain an SIJ order for immigration purposes rather than to obtain relief from parental maltreatment.[3]

On appeal, the Petitioner asserts that the Family Court exercised jurisdiction over him as a juvenile under state law because he was considered a minor under the laws of New York until the age of 21 years, and that the SIJ findings otherwise satisfy the statutory and regulatory requirements for SIJ classification.

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). 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. 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 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). Consequently, as a general matter, a Family Court in New York exercises jurisdiction over a juvenile up to the age of 21 years.

Nevertheless, we are withdrawing the Director's underlying conclusion that the Petitioner established that his date of birth is in [redacted] 1997. Instead, based on contradictory and unresolved evidence regarding his date of birth, the Petitioner has not established his date of birth is in [redacted] 1997 or any other date. Therefore, the Petitioner has not met his burden of proof to show that he filed the SIJ

[3] In addition to the inconsistencies noted by the Director, the Petitioner's affidavit to the Family Court and the Court's SIJ order reflect that the Petitioner claimed that he was forced to drop out of school in Vietnam in order to work selling bread and shining shoes. The Petitioner further asserted to the Court in his 2017 affidavit that he hoped to remain in the United States in order obtain his general educational development (GED) diploma and then attend college. However, the Petitioner had already secured an F-1 nonimmigrant visa and entry into the United States in 2015 in order to attend the University [redacted], subsequently asserting on his associated Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), that he attended the university for a few months.

petition prior to reaching the age of 21 years of age, as required for SIJ classification. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b)(1). Because this issue is dispositive, we need not reach the issues as to whether the Family Court's SIJ order otherwise satisfies the requirements at section 101(a)(27)(J)(i)-(iii) of the Act and 8 C.F.R. § 204.11(b)(5), and USCIS consent is warranted. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

When he filed the SIJ petition, the Petitioner listed his date of birth in [redacted] 1997, and included an October 2016 transcription of the information on his Vietnamese birth certificate with the [redacted] 1997 date of birth. However, his other supporting evidence includes a partial copy of his 2014 Vietnamese passport and a 2015 U.S. visa, both of which reflect his date of birth is in [redacted] 1993, which would mean that he was 24 years of age when the Family Court issued the SIJ order and no longer under the Court's jurisdiction. According to the June 2017 affidavit he later provided to the Family Court, the Petitioner asserted that his aunt went to a broker and obtained a visa for the Petitioner so that he could come to the United States on a student visa, but he asserted that the date of birth on it ([redacted] 1993) was wrong. When he filed the SIJ petition in December 2017, the Petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on which he also stated that his aunt had obtained a Vietnamese passport and U.S. visa for him with an incorrect date of birth.

In the denial, the Director discussed the Petitioner's claim that his aunt was responsible for information in his U.S. visa, noting that a U.S. consular officer interviewed the Petitioner in January 2015 with respect to his U.S. visa application, and that the Petitioner, rather than another individual, provided testimony and evidence in support of his nonimmigrant visa application.

On appeal, the Petitioner does not refute the evidence in his record showing that he obtained and used a U.S. visa and Vietnamese passport with a [redacted] 1993 date of birth in order to gain entry into the United States and to attend a U.S. university as an F-1 student. Moreover, in the NOID, we advised the Petitioner of our intent to dismiss the appeal, and we offered him the opportunity to respond and submit additional evidence to rebut this information and establish his eligibility for SIJ classification. 8 C.F.R. § 103.2(b)(16)(i). The record does not reflect that we have received a response from the Petitioner. Consequently, although the Petitioner claimed to USCIS (and to the Family Court) that his aunt was responsible for obtaining documents with an incorrect date of birth in 1993, other evidence in the record contradicts this information and the Petitioner has not explained or otherwise addressed this discrepancy below or in response to the NOID. Moreover, the Petitioner used a 2014 Vietnamese passport and the 2015 U.S. visa with the [redacted] 1993 date of birth to gain entry into the United States and to attend a U.S. university.

We acknowledge the Petitioner's evidence in support of his claimed date of birth in the context of his SIJ petition. However, in light of the unresolved discrepancies in the Petitioner's prior statements to State Department in seeking a visa, and to the Department of Homeland Security (DHS) in seeking entry and admission into the United States as an F-1 student based on the documents showing he has a [redacted] 1993 date of birth, he has not established by a preponderance of the evidence that his date of birth is in [redacted] 1997, [redacted] 1993, or any other date. As a consequence, the Petitioner also has

not established by a preponderance of the evidence that he was under 21 years old on the date that he filed his SIJ petition. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b); *see also Matter of Chawathe*, 25 I&N Dec. at 375 (stating that it is the Petitioner's burden to establish eligibility for the benefit sought).

III. CONCLUSION

The Petitioner has shown that a Family Court in New York has the authority to exercise its jurisdiction over an individual as a juvenile under state law if the individual was over the age of 18 years and under 21 years, and we withdraw the portion of the Director's decision that suggests the contrary. However, because the Petitioner's evidence regarding his date of birth is contradictory and remains unresolved, the Petitioner has not established by a preponderance of the evidence his actual date of birth as an initial matter. Therefore, the Petitioner has not shown that he was under 21 years of age at the time of filing the SIJ petition in December 2017, as required for purposes of SIJ classification. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b)(1). Consequently, the SIJ petition cannot be approved and remains denied.

ORDER: The appeal is dismissed.