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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-D-J-B-F-

DATE: APR. 20, 2016

APPEAL OF BALTIMORE, MARYLAND FIELD OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks classification as a special immigrant juvenile (SIJ). *See* Immigration and Nationality Act (the Act) §§ 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign children in the United States who have been abused, neglected, or abandoned, and found dependent on a juvenile court in the United States.

The Field Office Director, Baltimore, Maryland, denied the petition. The Director concluded that the Petitioner's guardianship order was not valid as the Petitioner was already over 18 years of age when the juvenile court issued the order and the record did not establish the court's authority to exercise jurisdiction over the Petitioner as a child under Maryland state law.

The matter is now before us on appeal.[1] On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the juvenile court properly exercised jurisdiction over the Petitioner as a child under Maryland state law, as it existed at the time the order was issued, and she submits, on appeal, a *nunc pro tunc* guardianship order from the juvenile court.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

Section 204(a)(1)(G) of the Act allows an individual to self-petition for classification as an SIJ. Section 101(a)(27)(J) of the Act defines an SIJ as:

> an immigrant who is present in the United States—

[1] The record indicates that counsel of record, who filed the instant appeal on behalf of the Petitioner, was indefinitely suspended from the practice of law in Maryland on 2016. Pending final disposition of this proceeding, counsel was also suspended from the practice of law before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security, as of , 2016. As counsel is not currently authorized to practice law before us, the present decision will be mailed directly to the Petitioner.

> (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
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> (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
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> (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—
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> > (I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
> >
> > (II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act[.]

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to consent to the grant of SIJ classification. This consent determination is an acknowledgement that the request for SIJ classification is *bona fide*, which means that the juvenile court order and the best-interest determination were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain immigrant status.[2]

The burden of proof is on a petitioner to demonstrate eligibility for SIJ classification by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in El Salvador on [redacted] and entered the United States on or about September 8, 2012, without inspection, admission, or parole, when she was [redacted] years old. She was apprehended by U.S. Border Patrol agents shortly after her entry near

[2] H.R. Rep. No. 105-405, at 130 (1997); *see also* Memorandum from Donald Neufeld, Acting Associate Director for Domestic Operations, USCIS, HQOPS 70/8.5, *Trafficking Victims Protection Reauthorization Act of 2008; Special Immigrant Juvenile Status Provisions* 3 (Mar. 24, 2009), https://www.uscis.gov/laws/policy-memoranda.

Texas. On 2013, the Circuit Court for Maryland (juvenile court), issued an order granting guardianship of the Petitioner to J-B-[3] and making specific findings to establish the Petitioner's eligibility for SIJ classification (guardianship or juvenile court order). On 2015, when the Petitioner was years old, the juvenile court issued a second order that was effective *nunc pro tunc* as of , 2014, but was otherwise identical to the 2013 order with respect to the court's findings.

The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on February 21, 2014. The Director subsequently issued a notice of intent to deny (NOID), determining that the juvenile court order was invalid as the court did not have authority to exercise jurisdiction over the Petitioner on a guardianship petition because the Petitioner was already over 18 years of age and was not a child under Maryland law. The Petitioner responded to the NOID with a brief, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 and the Petitioner timely appealed.

III. ANALYSIS

A full review of the record, as supplemented on appeal, does not establish the Petitioner's eligibility. The appeal will be dismissed for the following reasons.

A. The Petitioner Is Not the Subject of a Valid Juvenile Court Order

The Director properly found the juvenile court order at issue here to be deficient, because the record did not establish that the juvenile court declared the Petitioner dependent on the court and granted J-B- guardianship of the Petitioner in accordance with state law. *See* section 101(a)(27)(J)(i) of the Act. The guardianship order was issued after the Petitioner had already attained 18 years of age. The order refers to the Petitioner as a "minor child," but does not cite to or reference any statutory or legal basis under state law on which the juvenile court assumed jurisdiction over the Petitioner as a minor after she had turned 18 years of age.

Section 1-201(b)(10) of the Md. Code Ann. Fam. Law, as currently in effect, provides an equity court in Maryland with jurisdiction over matters of custody or guardianship of an immigrant child pursuant to a motion for SIJ factual findings that requests a "determination that a child was abused, neglected, or abandoned" before the child obtains 18 years of age. Subsection (a) of section 1-201 of the Md. Code Ann. Fam. Law further provides that for purposes of subsection (b)(10), the term "child" means "an unmarried individual under the age of 21 years." However, these referenced provisions only went into legal effect on 2014, after the issuance of the 2013, guardianship order here. The prior version of section 1-201 of the Md. Code Ann. Fam. Law, which was in effect when the order here was issued, did not address custody or guardianship matters relating to an immigrant child pursuing SIJ classification and did not specifically define the term "child."

[3] We provide the initials of individual names throughout this decision to protect identities.

On appeal, the Petitioner contends that prior to 2014, the definition of "child" in Maryland contained no age limitations. However, the guardianship order refers to the "minor child," and, as of the date of the order, "minor" was defined under Maryland law as "an individual under the age of 18." *See* Md. Code Ann. Art. 1, § 24 (West 2013). Furthermore, the legislative history behind the 2014 amendment indicates that prior to , 2014, individuals over 18 years of age seeking SIJ classification were not eligible to obtain a dependency or guardianship order in a juvenile court under Maryland law, as they did not meet the state definition of "child" for purposes of such proceedings. *See* Jennifer K. Botts, Dep't of Legis. Serv., Md. Gen. Assemb., *Fiscal and Policy Note (Revised) on H.B. 315*, at 2 (Mar. 13, 2014), http://mgaleg.maryland.gov/2014rs/fnotes/bil_0005/hb0315.pdf (noting that Maryland state law "require[d] a child to be younger than age 18 by the time the child is first declared a juvenile court dependent" and that the bill, which amended section 1-201 of the Md. Code Ann. Fam. Law, was intended "to align [Maryland] law with federal regulations" on SIJ eligibility under which an immigrant child is eligible for SIJ classification if under 21 years of age). The legislative history makes clear that the 2014 amendment was intended to remedy this situation so that individuals would still be eligible to obtain a dependency order in a Maryland juvenile court for SIJ classification purposes so long as they are under 21 years of age. *See id.* As noted, the juvenile court order here was issued prior to the 2014 effective date of section 1-201 of the Md. Code Ann. Fam. Law. The 2013 court order did not set forth, and the Petitioner has not demonstrated, the statutory or legal basis on which the court exercised jurisdiction over the Petitioner to declare her a dependent of the court when the Petitioner was already over 18 years of age and no longer a minor child under Maryland state law, as in effect at the time. The record also does not contain any additional court records, the underlying petition to the juvenile court, or other records to establish the court's exercise of jurisdiction over the Petitioner.

The Petitioner further contends the Director impermissibly went behind the state juvenile court's order and its interpretation of its state laws, where federal law specifically delegates such finding to the state courts. The Act does defer findings of dependency or custody; non-viability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner's best interests, to the expertise and judgment of the juvenile court. Subsections 101(a)(27)(J)(i)-(ii) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (referencing the determinations of a juvenile court or other administrative or judicial body). However, the matter specifically at issue is not the juvenile court's findings in the order, but rather the underlying validity of the order, which the Petitioner must establish. The Petitioner asserts that while the 2014 amendment to section 1-201 of the Md. Code Ann. Fam. Law clarifies that a juvenile court in Maryland has jurisdiction over individuals over 18 but under 21 years of age who seek a dependency order for SIJ purposes, the fact that the statute was amended did not negate the juvenile court's jurisdiction in such instances prior to the amendment.[4] However, the Petitioner has not shown that the juvenile court had such jurisdiction

[4] The Petitioner also mistakenly relies on *Simbaina v. Bunay*, 221 Md. App. 440 (2015), to contend that the Maryland circuit court here, under its equitable powers, had the authority to assume jurisdiction over the Petitioner, where she had voluntarily submitted to such jurisdiction. The Court of Special Appeals in *Simbaina* held that a Maryland circuit court

when it issued the 2013 order, particularly as the issuance of the order after the Petitioner's 18th birthday conflicted with Maryland state law in existence at the time. *See Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (The Petitioner bears the burden in establishing his or her eligibility in these proceedings).

On appeal, the Petitioner submits a new guardianship order, issued 2015, when she was years old, and effective *nunc pro tunc* as of , 2014, when the juvenile court first acquired jurisdiction under the current version of section 1-201 of the Md. Code Ann. Fam. Law to issue dependency and guardianship orders for individuals seeking SIJ classification who were above 18 years but under 21 years of age. However, the Petitioner is required to establish eligibility at the time of filing the immigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A SIJ petitioner must demonstrate that at the time of the Form I-360 filing, he or she had "been declared dependent on a juvenile court located in the United States." Section 101(a)(27)(J)(i) of the Act.[5] Here, the *nunc pro tunc* juvenile court order was effective as of 2014, and thus, it was not in effect at the time the Form I-360 was filed in February 2014. Consequently, the Petitioner has not established her eligibility for SIJ classification at the time of filing, as she has not demonstrated that she was the subject of a valid juvenile court dependency order at the time she filed her Form I-360.

In summary, the Petitioner has not demonstrated that the juvenile court order, submitted below, was issued in accordance with state law, as required by section 101(a)(27)(J)(i) of the Act. Further, the *nunc pro tunc* court order by the juvenile court, proffered on appeal, was not effective at the time of, and was not issued prior to, the filing of the Petitioner's Form I-360. Accordingly, the Petitioner is not eligible for SIJ classification because at the time of filing the Form I-360, she was not the subject of a valid juvenile court order declaring her dependent on the court. *See* section 101(a)(27)(J)(i) of the Act.

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was a "juvenile court" within the federal definition of the term for purposes of making SIJ factual determinations, an issue that the Director did not dispute in these proceedings. *See Simbaina*, 221 Md. App. at 455-56. The *Simbaina* court, however, did not address the circuit court's jurisdiction over an individual over the age of 18 in a custody or guardianship proceeding prior to the 2014 amendment to section 1-201 of the Md. Code Ann. Fam. Law. The court did note that any relevant limitations on how SIJ factual findings should be made, and what an appropriate proceeding was, would arise under State law. *See id.* As noted, our review of the record indicates that Maryland law, as in effect in 2013, limited the juvenile court's authority to exercise jurisdiction over the Petitioner as a minor on a guardianship petition, because she had already obtained 18 years of age and was not a "minor child" under state law at the time. The Petitioner does not cite to any statutory or legal basis on which the juvenile court, even under its equitable powers, could have assumed jurisdiction in such an instance.

[5] Additionally, the Stipulation enforcing the settlement agreement in *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. 2005), further clarifies that a valid juvenile court dependency order must have been issued prior to the filing of a Form I-360 in order to establish eligibility for SIJ classification. The Stipulation provides that USCIS will not deny, revoke, or terminate a Form I-360 or an SIJ-based Form I-485 if, *at the time of filing the SIJ petition*: (1) the petitioner is or was under 21 years of age, unmarried, and otherwise eligible; *and* (2) *the petitioner either is the subject of a valid dependency order or was the subject of a valid dependency order* that was terminated based on age prior to filing. *See also* USCIS Policy Memorandum PM-602-0117, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* 4 (June 25, 2015), https://www.uscis.gov/laws/policy-memoranda (emphasis added).

B. USCIS' Consent is Not Warranted

Upon *de novo* review, we further find that the Form I-360 is also not approvable because the present record does not establish a reasonable factual basis for the juvenile court's non-viability of parental reunification and best interest determinations. As such, USCIS consent to a grant of SIJ classification, which is required under section 101(a)(27)(J)(iii) of the Act, is not warranted.

When adjudicating an SIJ Form I-360, USCIS examines the juvenile court order to determine if it contains the requisite findings of dependency or custody, non-viability of reunification with one or both parents, and the best interests determination, as required by sections 101(a)(27)(J)(i) and (ii) of the Act. USCIS requires the factual basis for the court's findings so it may fulfill its required consent function.[6] Juvenile court orders that include or are supplemented by specific findings of fact as to its SIJ findings will generally be sufficient to establish eligibility for consent. Although a juvenile court's findings need not be overly detailed, they must reflect that the juvenile court made an informed decision.[7]

The juvenile court order here includes the requisite determinations that the Petitioner's reunification with her biological parents was not viable due to their abandonment of her because they are unable to care for the Petitioner and that it was not in the Petitioner's best interests to be returned to El Salvador. However, the court did not make any factual findings to provide a reasonable factual basis for these determinations. The record also does not contain the underlying petition for the juvenile court order, or other evidence, on which the court may have relied in determining that the Petitioner had been abandoned by her parents and that it was not in the Petitioner's best interest to be returned to El Salvador. As the record does not establish a reasonable factual basis for the juvenile court's best interest and non-viability of parental reunification determinations, the consent of USCIS to a grant of SIJ classification, as required by section 101(a)(27)(J)(iii) of the Act, is not warranted.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

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[6] A "factual basis" means the facts upon which the juvenile court relied in making its rulings or findings.

[7] *See* Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQADN 70/23, *Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions* 4-5 (May 25, 2004) (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the juvenile court's rulings).

ORDER: The appeal is dismissed.

Cite as *Matter of E-D-J-B-F-*, ID# 16141 (AAO Apr. 20, 2016)