U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S-

DATE: AUG. 10, 2016

APPEAL OF LONG ISLAND, NEW YORK 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) sections 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-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The District Director, New York, New York, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition). The Director concluded that U.S. Citizenship and Immigration Services' (USCIS) consent to a grant of SIJ status was not warranted because: (1) the record did not establish a reasonable factual basis for the juvenile court determinations that parental reunification with one or both of the Petitioner's parents was not viable and that it was in his best interest not to be returned to the country of birth or last habitual residence, and (2) the Petitioner sought the juvenile court order primarily for the purpose of obtaining an immigration benefit.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that the record demonstrates that USCIS' consent to his request for SIJ classification is warranted.

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—
>
> (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;
>
> (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
>
> (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—
>
> (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 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.[1]

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 India on and entered the United States without inspection, admission, or parole in December 2012. On 2014, when the Petitioner was years old,[2] the Family Court of the State of New York,

[1] 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.

[2] The record indicates that the juvenile court assumed jurisdiction over the Petitioner as a minor until the age of 21 in accordance with New York state law. The guardianship order, which indicates that the Petitioner consented to the appointment of a guardian, cites to section 661 of the New York Family Court Act, which defines the term "minor" for purposes of guardianship as including a person less than 21 years of age who consents to the appointment or continuation

New York (juvenile court) issued an *Order Appointing Guardian of the Person*, awarding guardianship of the Petitioner to his cousin, H-S-,[3] and an *Order-Special Juvenile Status* (court order), making specific findings related to the Petitioner's eligibility for SIJ classification.

III. ANALYSIS

Upon *de novo* review of the record, as supplemented on appeal, the Petitioner has not overcome the grounds for denial.

A. USCIS' Consent to SIJ Classification Is Not Warranted

1. The Juvenile Court Order Does Include the Requisite Judicial Determinations

When adjudicating an SIJ petition, 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. The juvenile court order here includes the requisite judicial determinations that parental reunification was not viable due to the Petitioner's father's abandonment of him and that it was not in the Petitioner's best interest to be returned to India.

2. No Reasonable Factual Basis for the Requisite Judicial Determinations

Once it has been determined that the order includes the requisite findings, USCIS must then determine whether there is a sufficient factual basis for the juvenile court's non-viability of parental reunification and best interest determinations so it may fulfill its required consent function.[4] A juvenile court order that includes or is 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.[5] The Director found that USCIS' consent to a grant of SIJ classification was not warranted because the record did not establish a reasonable factual basis for the juvenile court's non-viability of parental reunification and best interest determinations.

On appeal, the Petitioner contends that the record demonstrates that his request for SIJ classification warrants USCIS consent, because the juvenile court orders contain specific factual findings to support the court's non-viability determination and the record before the juvenile court otherwise demonstrates a reasonable factual basis for both the non-viability and best interest determinations.

---

of a guardian after the age 18.

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

[4] A "factual basis" means the facts upon which the juvenile court relied in making its rulings or findings. *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 27, 2004), https://www.uscis.gov/archive/archive-laws/archive-memos.

[5] *See id.*

Upon review, the record does not establish a reasonable factual basis for the juvenile court's non-viability determination. The juvenile court found that the Petitioner's father had abandoned him when the Petitioner was or years old and that while the Petitioner was living with his mother in India, he was forced to work for food because of the extreme poverty in which the household existed. Citing to USCIS guidance,[6] the Petitioner maintains that the Director erred in looking behind these court findings to conclude that the Petitioner's request for SIJ classification was not *bona fide.* However, although a juvenile court order containing the requisite non-viability determination and specific findings of facts will usually be sufficient to establish eligibility for consent, adjudicators may review additional evidence where the order is insufficient to determine whether there is a reasonable factual basis for the court determination.[7] Here, the court order is insufficient because the record discloses discrepancies that contradict the Petitioner's claim on appeal that his request for SIJ classification is *bona fide* and that he sought the juvenile court order primarily to gain relief from his father's abandonment and not solely to obtain lawful immigrant status in the United States. For instance, a report of the home study investigation ordered by the juvenile court did not reference the claimed parental abandonment by the Petitioner's father and instead, indicated only that the Petitioner and his guardian had stated that the Petitioner left India and came to the United States for a better life and due to lack of opportunities in India. In addition, the underlying petition to the juvenile court by the Petitioner's guardian asserted that the Petitioner would have "no choice but to return [to India] to live with his parents where he will continue to be physically abuse[d]." This is inconsistent with the Petitioner's claim, and with the juvenile court determination, that the Petitioner's father had abandoned him. The guardian's assertions in the juvenile court petition regarding the physical abuse the Petitioner purportedly experienced is also inconsistent with his statement during the home study investigation in which he indicated only that the Petitioner had come to the United States because conditions in India did not allow for opportunities and made no reference to physical abuse. The remaining documentary evidence in the record, including the notice of motion, the attorney affirmation, and the attorney's memorandum of law to the juvenile court, contains only assertions of facts by the Petitioner's counsel.[8] The documents do not identify the specific evidence (including the Petitioner's testimony) that served as a basis for the court's non-viability determination due to abandonment and do not establish that the court made an informed decision in finding that the determination was warranted despite the discrepancies in the record regarding the claimed abandonment.

In addition, the juvenile court order also does not include and is not supplemented by specific findings of fact to support the court's determination that it was not in the Petitioner's best interest to be returned to India. Further, the court order did not identify the evidence or source of information on which it relied in making the determination. The Petitioner contends on appeal that the underlying petition to the juvenile court, the investigative report, and notice of motion establish the factors on which the court relied in rendering its best interest determination. However, they too do not establish the specific facts or the evidence on which the juvenile court relied to show that the

---

[6] *See id.*
[7] *See id.* at 5.
[8] *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988) (The assertions of counsel do not constitute evidence).

court made an informed decision in rendering the best interest determination. Moreover, as discussed, the underlying petition to the juvenile court and the court-ordered home study investigation disclose significant inconsistencies regarding the Petitioner's claim of parental abandonment and undermine the reliability of those documents in a determination of whether there is a reasonable factual basis for the court's best interest determination.

Upon *de novo* review, although the juvenile court made the requisite SIJ determinations, the record does not establish a reasonable factual basis for such determinations and does not demonstrate the *bona fide* nature of the Petitioner's request for SIJ classification. Accordingly, the Petitioner has not established that his request for SIJ classification merits USCIS consent.

IV. CONCLUSION

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. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-S-*, ID# 17522 (AAO Aug. 10, 2016)