U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-Y-L-R-

DATE: MAR. 25, 2016

APPEAL OF PITTSBURGH, PENNSYLVANIA 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 203(b)(4), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The Field Office Director, Pittsburgh, Pennsylvania, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles as described in section 101(a)(27)(J) of the Act.[1] Section 101(a)(27)(J) of the Act defines a special immigrant juvenile as:

> an immigrant who is present in the United States—
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> (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;

[1] The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). *See* section 235(d) of the TVPRA 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), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf. The SIJ provisions of the TVPRA are applicable to this appeal. *See* section 235(h) of the TVPRA.

(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[.]

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in El Salvador on He entered the United States without inspection, admission, or parole on , 2011, near Texas. The Petitioner was apprehended by U.S. Border Patrol agents during his entry and placed in the custody of the Office of Refugee Resettlement. He was released into the custody of his uncle, on January 25, 2012. 2014, the Family Court of West Virginia, granted guardianship over the Petitioner when he was years old.[2] *See Final Order of Appointment of Minor Guardian,* Family Court, W.V., Civil Action No. Thereafter, the Circuit Court of West Virginia (juvenile court), issued an order granting petition to adopt the Petitioner. *See Order of Adoption,* Circuit Court, W.V., Civil Action No. The juvenile court subsequently issued an order making factual findings to support the Petitioner's SIJ petition in those same adoption proceedings. *See Order in Support of* Circuit Court, W.V., Civil Action No.

The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on when he was years old. The Director issued a notice of intent to deny (NOID), notifying the Petitioner that U. S. Citizenship and Immigration Services' (USCIS) consent to a grant of SIJ status was not warranted because the record did not establish that he sought the juvenile court order primarily for the purpose of obtaining relief from abuse, abandonment, or neglect, rather than for the purpose of obtaining an immigration benefit. The Petitioner timely responded to the NOID with additional evidence, which the Director found insufficient to establish

[2] Section 44-10-3 of the West Virginia Code (W. Va. Code), cited in the guardianship order, provides that the family and circuit court have concurrent jurisdiction to appoint a guardian of a minor.

the Petitioner's eligibility. On May 20, 2015, the Director denied the Petitioner's request for SIJ classification, concluding that the record did not establish that USCIS' consent was warranted and that the Petitioner's claim of abandonment by his parents on his application to the juvenile court for SIJ status was "moot" given that he had already been adopted by his uncle. The Petitioner timely appealed and submits a brief and background material.

III. ANALYSIS

We review these proceedings *de novo*. 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.

Section 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 status. 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.[3]

In the decision below, the Director held that USCIS remained "unconvinced" that the Petitioner sought the [redacted] 2014, juvenile court order primarily to gain relief from abandonment. The Director noted that the Petitioner had no longer been susceptible to any harm or abandonment by his parents at the time the order was issued, given that his uncle had already adopted him in [redacted] 2014, rendering moot the need to seek relief from his parents' abandonment before the juvenile court. The Director further concluded that this, along with the fact that the Petitioner was smuggled into the United States while traveling with relatives, showed that the Petitioner's primary intent in obtaining the juvenile court order was to gain an immigration benefit.

The Director's determination that the Petitioner's request for SIJ classification was not *bona fide* is misguided. When adjudicating an SIJ petition, USCIS examines the juvenile court order only to determine if it contains the requisite 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, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. USCIS is not the fact finder in regards to these issues of child welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. Section 101(a)(27)(J)(i)-(ii) of the Act (referencing the determinations of a juvenile court or other administrative or judicial body). Accordingly, USCIS examines the relevant evidence only to ensure that the record contains a reasonable factual basis for the court's order.[4] Here, rather than inquiring into whether there was a reasonable factual basis for

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[3] H.R. Rep. No. 105-405 at 130 (1997); *see also* Neufeld Memorandum, *supra* at 3.

[4] *See* Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQADN 70/23, *Memorandum #3 - Field Guidance on Special Immigrant Juvenile Status Petitions,* 4-5 (May 27, 2004), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the court's rulings).

the court's determination of non-viability of parental unification due to abandonment, the Director impermissibly went behind the juvenile court's determination to find that the Petitioner's request for SIJ classification was not *bona fide* based on a subjective belief that the Petitioner was no longer vulnerable to abandonment due to his adoption, and that this, along with the fact the Petitioner was smuggled into the United States with relatives, showed his primary intention was to obtain immigrant status. Neither the Petitioner's adoption[5] nor his manner of entry into the United States preclude USCIS from consenting to a grant of such classification where the record otherwise establishes his statutory eligibility and a reasonable factual basis for the juvenile court's best interest and non-viability determinations. Thus, we withdraw the Director's decision insofar as it went impermissibly behind the juvenile court's determination regarding non-viability of parental reunification to make a subjective determination that the Petitioner's request for SIJ classification was not *bona fide.*

Notwithstanding our finding, the Form I-360 is not approvable because the present record does not establish a reasonable factual basis for the juvenile court's non-viability determination. Although the 2014, juvenile court order includes the requisite determination that the Petitioner's reunification with his biological parents was non-viable due to his parents' abandonment and consent to adoption, the court did not provide a basis for its determination of non-viability due to abandonment. The memorandum of law that the Petitioner submitted to the juvenile court for factual findings in support of SIJ classification also only asserted that reunification was not viable due to the Petitioner's parents' "abandonment and consent to adoption," without setting forth any facts for the court's consideration to establish his claim of parental abandonment. Additionally, the petition for adoption and the corresponding adoption order in the record both indicate that the Petitioner's parents consented to his adoption with no indication that the juvenile court ever deemed the Petitioner abandoned by his parents. Similarly, the earlier 2014, guardianship order by the family court stated that the Petitioner's parents waived appointment as guardian, thereby allowing the Petitioner's uncle to be appointed guardian. The juvenile and family court records therefore demonstrate that the guardianship and adoption petitions were granted after the Petitioner's parents consented to both and not because the courts made a determination that his parents had abandoned him.

In his written statement below, the Petitioner stated that he did not live with his biological parents when he was in El Salvador and that neither of them provided for him financially. On appeal, the Petitioner contends that his parents' actions in failing to provide for him financially or remain in communication with him presumptively constitutes abandonment under W. Va. Code § 48-22-306(a).[6] Although we recognize the difficulties that the Petitioner has encountered as a

[5] Moreover, a child adopted or placed in guardianship after a dependency order is issued remains eligible for long-term foster care under 8 C.F.R. §204.11(a), and, necessarily, remains considered a juvenile court dependent based on the prior dependency order. *See* Yates Memorandum, *supra* note 3, at 4 n.8. Consequently, a SIJ petitioner's adoption does not necessarily nullify the intended protective purpose of a valid juvenile court order.

[6] Section 48-22-306(a) of the W. Va. Code relates to adoption proceedings and provides that a parent is presumed to have abandoned a child where he or she fails to provide financial support for the child and does not visit or otherwise communicate with the child when the parent knows where the child is.

result of his parents' conduct, USCIS' role here is not to make, in the first instance, the factual findings necessary to support and provide a reasonable basis for the juvenile court's determination of non-viability of parental reunification due to abandonment. Rather, USCIS examines the record only to determine whether the juvenile court made the requisite factual findings that establish a reasonable factual basis for its non-viability determination. As discussed, the court documents in the record indicate that the Petitioner's adoption and guardianship petitions were granted after his parents consented to those proceedings, and none of them show that the juvenile court identified or relied on any facts to support a determination that the Petitioner had been abandoned. The Petitioner maintains that the fact that the juvenile court's adoption order references only his parents' consent to his adoption, rather than their abandonment, is not dispositive here, because his parents' consent demonstrated a purpose to "forego all duties" of a parent such that it demonstrated the requisite abandonment under section 48-22-102 of the W. Va. Code.[7] The Petitioner is mistaken. Section 48-22-301 of the W. Va. Code, which identifies the individuals who are required to consent to the adoption of a child, including the child's birth parents, provides a specific exception at subsection (b)(2) where no such consent is necessary if the court "finds" that the parent(s) abandoned the child as set forth in section 48-22-306 of the W. Va. Code.[8] Consequently, the court may grant an adoption petition based on either parental consent or a court finding of parental abandonment. The Petitioner's adoption order, on its face, indicates that it was granted after the Petitioner's parents consented to his adoption as opposed to after a court finding of parental abandonment.[9]

In sum, there is no evidence that the juvenile court, in rendering the non-viability determination, was aware of, considered, or relied on any of the facts that the Petitioner asserts in these proceedings relating to his parents' abandonment of him. The record, therefore, does not provide a reasonable factual basis for the juvenile court's determination of non-viability of parental reunification due to abandonment. Accordingly, the consent of USCIS to a grant of SIJ classification in this case, as required by section 101(a)(27)(J)(iii) of the Act, is not warranted.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. 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 I-Y-L-R-*, ID# 16047 (AAO Mar. 25, 2016)

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[7] Section 48-22-102 of the W. Va. Code defines abandonment as "any conduct by the [biological parents] . . . that demonstrates a settled purpose to forego all duties and relinquish all parental claims to the child."

[8] *See supra* note 6.

[9] Similarly, the family court guardianship order here indicates that it was issued based on the Petitioner's parents' waivers, although W. Va. Code § 44-10-3(f) specifically allowed the family court to appoint a guardian for the Petitioner on alternative grounds, including where there is a finding of parental abandonment.