U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-E-C-P-

DATE: MAY 10, 2016

APPEAL OF KANSAS CITY, MISSOURI FIELD OFFICE DECISION

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

The Petitioner seeks classification as a special immigrant juvenile. *See* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 203(b)(4), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The Field Office Director, Kansas City, Missouri, 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 (SIJ) as described in section 101(a)(27)(J) of the Act. 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[.]

Section 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to consent to the grant of SIJ status. This consent determination "is an acknowledgement that the request for SIJ classification is bona fide," meaning that neither the custody order nor the best interest determination were "sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment." *See* Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQADN 70/23, *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions* 2 (May 27, 2004), https://www.uscis.gov/laws/policy-memoranda (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the juvenile court's rulings).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Guatemala on [redacted] He entered the United States on or about February 9, 2014, without inspection, admission, or parole. He was apprehended by U.S. Border Patrol Agents after his entry in the [redacted], Texas, was taken into the custody of the Office of Refugee Resettlement (ORR), and was issued a Notice to Appear in removal proceedings.

On [redacted] the Circuit Court of [redacted] Missouri, Probate Division (juvenile court) issued an order regarding the Petitioner's eligibility for SIJ status (SIJ eligibility order). On [redacted] the juvenile court appointed [redacted] as the Petitioner's legal guardian (guardianship order).

The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on April 1, 2015. The Director issued a request for evidence (RFE) on May 28, 2015, requesting copies of the juvenile court records, including the transcript of the proceedings, or evidence presented to the juvenile court. The Director also requested the "consents" from the Petitioner's parents, as referenced in the SIJ eligibility order. The Petitioner replied to the RFE with a brief and additional evidence, including the transcript of proceedings before the juvenile court on [redacted] and Consent to Appointment of Fiduciary affidavits (consent affidavits) from the Petitioner's father and mother.

The Director noted that the transcript of proceedings indicated that the Petitioner filed the Form I-360 based on a fear of gang violence, which the Director concluded did not qualify as abuse, neglect, or abandonment. Therefore, the Director concluded that the record lacked a sufficient factual basis for the SIJ eligibility order. Additionally, the Director found that the consent affidavits from the Petitioner's parents indicated that they intended to grant guardianship of the Petitioner to

on a temporary basis. Accordingly, the Director concluded that consent to granting SIJ classification was not warranted and denied the Form I-360. The Petitioner filed a timely appeal.

III. ANALYSIS

The Director denied the Form I-360 based on a finding that the evidence did not establish that consent to grant SIJ classification was warranted. On appeal, the Petitioner asserts that the SIJ eligibility order contained the requisite findings of custody, nonviability of reunification due to neglect and abandonment, and that return to Guatemala is not in his best interest, as outlined in section 101(a)(27)(J)(i)-(ii) of the Act. He contends that the SIJ eligibility order provided a sufficient factual basis for the findings of the juvenile court, and that the Director erred in determining that the juvenile court incorrectly concluded that the Petitioner was abused, neglected, or abandoned. The Petitioner argues that "failure to protect" is "a legally recognized form of neglect under [Missouri] law" and that the Director incorrectly applied a different definition, contrary to Missouri law and USCIS policy.

When adjudicating a request for SIJ classification, USCIS examines the juvenile court order only to determine if it contains the requisite findings of dependency or custody; nonviability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner's best interest, 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 juvenile court's order. *See* Yates Memorandum, *supra*, at 4-5 (where the record demonstrates a reasonable factual basis for the juvenile court's order, USCIS should not question the juvenile court's rulings). Juvenile court orders that contain or are supplemented by specific factual findings generally provide a sufficient basis for USCIS' consent. Orders lacking specific factual findings are insufficient to warrant the agency's consent and must be supplemented by other relevant evidence demonstrating the factual basis for the juvenile court's order. *Id.* at 5; *see also* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54981, 54985 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. § 204.11).

The SIJ eligibility order mirrors the statutory language at section 101(a)(27)(J)(i) of the Act but does not provide specific factual findings to support its determination that the Petitioner was abused, neglected, or abandoned. The juvenile court stated that the Petitioner was "neglected by his parents in Guatemala for failing to protect him from gang violence, exposing him to individuals who are violent, and the child has been neglected and abandoned by the parents in that they allowed him to travel to a foreign country without proper care or custody." The transcript of proceedings provides that, according to the Petitioner's mother was unable to care for him in Guatemala because the Petitioner was "getting in fights with the gangs" and his mother "wasn't able to stop that." Additionally, transcript of proceedings indicates that the Petitioner's mother did not "make any provision for him" in his trip from Guatemala to the United States, which was dangerous.

Furthermore, the transcript of proceedings states that, according to the Petitioner's father was separated from the Petitioner's mother, "was doing nothing to help with the gangs," and "didn't make any provision for him to come here." However, the record does not indicate how the juvenile court determined that the Petitioner's parents' difficulty protecting him from gangs, or the fact that they did not assist him in traveling to the United States, amounts to abuse, neglect, or abandonment. Furthermore, in their consent affidavits, the Petitioner's parents each stated that they were "unable to provide the care needed because [they live] in Guatemala and [are] not available." The record of proceedings does not contain evidence to establish why the residence of the Petitioner's parents in Guatemala qualifies as abuse, neglect, or abandonment. Therefore, the Petitioner has not established that his request for SIJ classification is *bona fide*, and consent to granting SIJ classification is not warranted in this case.

Contrary to the Director's finding, the record of proceedings does not indicate that the appointment of as the Petitioner's guardian was temporary. The Director concluded that the consent affidavits from the Petitioner's parents granted guardianship of the Petitioner only on a temporary basis. However, the consent affidavits state, in pertinent part:

> I understand that the appointment is permanent and will not be set aside merely at my request. I understand that the appointment will only be set aside upon resignation of the fiduciary or upon proof that the fiduciary should be removed upon grounds as provided by law after notice and hearing to all persons interested in the welfare of the child. I hereby state that this consent is freely given without condition and without representation by any person, including the proposed fiduciary, to the effect that this proceeding is a temporary undertaking which may be terminated at my request.

The consent affidavits clearly indicate that the guardianship appointment was permanent. The Director focused only on the last sentence of the consent affidavits, which discusses a "temporary undertaking." However, that portion of the consent affidavits states that the Petitioner's parents signed the consent affidavits without any representation by any person that the arrangement was temporary. To the extent that the Director found that the guardianship appointment was temporary, that portion of the Director's decision is withdrawn. However, the SIJ eligibility order does not contain sufficient factual findings to support the findings of the juvenile court. Therefore, consent to SIJ classification is not warranted in this case.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-E-C-P-*, ID# 15930 (AAO May 10, 2016)