U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-J-M-G-M-

DATE: JAN. 17, 2018

APPEAL OF PROVIDENCE, RHODE ISLAND FIELD OFFICE DECISION

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

The Petitioner was born in Guatemala and entered the United States when he was [redacted] years old. When he was [redacted] years old, a family court in Rhode Island issued an order granting sole custody of the Petitioner to his mother. The family court also found that the Petitioner's reunification with his father was not viable due to abuse, neglect, and abandonment and that it was not in the Petitioner's best interest to return to Guatemala. The family court indicated the order was effective *nunc pro tunc* as of [redacted] 2016, when the Petitioner was [redacted] years old. The family court later issued an amended order containing the same findings but indicating that it was effective *nunc pro tunc* to [redacted] 2016, when the Petitioner was [redacted] years old. Based on these orders, 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 of their parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the Providence, Rhode Island, Field Office denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition) based on a finding that the family court's order was not issued by a juvenile court.

On appeal, the Petitioner submits a brief and copies of previously submitted evidence. He asserts that the Director improperly interpreted Rhode Island law and substituted U.S. Citizenship and Immigration Services' (USCIS)' judgment for that of the family court.

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

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years of age, and has been subject to a state juvenile court order determining that the petitioner cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(c). A petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner in the custody of a state agency or a guardian appointed by the state or the juvenile court.

Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to his or her or his or her parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii).

USCIS must also consent to the grant of SIJ classification. *Id.* at section 101(a)(27)(J)(iii). USCIS' consent is an acknowledgment that the request for SIJ classification is *bona fide*, which means that the juvenile court order and best-interest determination were sought to gain relief from abuse, abandonment, neglect, or a similar basis under state law and not primarily or solely to obtain an immigration benefit. 6 USCIS Policy Manual J.2(D)(5), https://www.uscis.gov/policymanual. Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Petitioner was born in Guatemala in and entered the United States in March 2012 without inspection, admission, or parole. In 2016, when the Petitioner was years old, a family court in Rhode Island issued an order granting sole custody of the Petitioner to his mother. The family court also found that the Petitioner's reunification with his father was not viable due to abuse, neglect, and abandonment and that it was not in the Petitioner's best interest to return to Guatemala. The family court indicated the order was effective *nunc pro tunc* to 2016, still after the Petitioner's birthday. The family court later issued an amended order containing the same findings but indicating that it was effective *nunc pro tunc* to 2016, when the Petitioner was years old.

A. The Family Court Was Not a Juvenile Court for SIJ Purposes

The Director determined that the family court's orders were not issued pursuant to the court's jurisdiction over the Petitioner as a juvenile, because Rhode Island law defines a child as under the age of 18 and the Petitioner was years of age when the court issued its orders. The Petitioner has not overcome this ground on appeal.

For SIJ classification, a "juvenile court" is a court "having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). While the specific title and type of court may vary from state to state, the record must establish that the court exercised jurisdiction over the petitioner as a juvenile under the applicable state law. 8 C.F.R. § 204.11(a); 6 USCIS Policy Manual, *supra*, at J.2(D)(4), J.3(A)(1). State law is, therefore, controlling on the definition of a juvenile or child within the states' child welfare provisions. 6 USCIS Policy Manual, *supra*, at J.2(D)(4), J.3(A)(1).

Pursuant to R.I. Gen. Laws Ann. section 8-10-3, the family courts have jurisdiction over all family-related matters and may act as juvenile courts in some instances, including in cases involving child custody, visitation, and child support, "matters relating to delinquent, wayward, dependent, neglected, or children with disabilities," adoption, and paternity. *See also* R.I. Gen. Laws Ann. § 15-

14.1-13 (providing that a family court has jurisdiction over child custody determinations); R.I. Gen. Laws Ann. § 14-1-5 (granting jurisdiction to family courts over proceedings concerning delinquent, wayward, dependent, or neglected children). Under Rhode Island law, a "child" is a person who is under 18 years of age. R.I. Gen. Laws Ann. §§ 14-1-3, 15-14.1-2.

In this case, the family court issued both of its orders after the Petitioner turned years of age. The Petitioner states on appeal that pursuant to R.I. Gen. Laws Ann. section 14-1-6, the court took jurisdiction over him at the time a petition regarding his neglect and dependency was filed. He argues that the family court did not lose jurisdiction over him when he turned 18 years of age because the family court must consent to loss of jurisdiction, and according to R.I. Gen. Laws Ann. section 14-1-6(a) the court cannot dismiss a petition regarding a dependent child prior to his or her 21st birthday unless a transition plan is in place.

The record does not clearly indicate the basis in Rhode Island law under which the family court found the Petitioner dependent on the court and granted custody to his mother. Although the Petitioner claims on appeal that the court acted under R.I. Gen. Laws Ann. section 14-1-6, which applies in relevant part to proceedings regarding neglected and dependent children, the evidence in the record does not show whether that was the case. The family court's orders do not cite section 14-1-6 or any other relevant provision of Rhode Island law, such as R.I. Gen. Laws Ann. section 15-14.1-2 regarding child custody determinations. The Petitioner has not submitted the underlying petition for custody or motion to the family court to show whether the petition was filed under R.I. Gen. Laws Ann. section 14-1-6, section 15-14.1-2, or any other relevant provision. Accordingly, the record does not support the Petitioner's assertion that the court retained jurisdiction over him under R.I. Gen. Laws Ann. section 14-1-6(a).

The Petitioner further argues on appeal that the family court had jurisdiction to enter orders *nunc pro tunc*, and that it properly entered the amended order *nunc pro tunc* to the date it originally obtained jurisdiction upon filing of the petition, prior to the Petitioner's 18th birthday. He contends that the court issued the amended order *nunc pro tunc* to correct a delay caused by the court's scheduling of his hearing after his 18th birthday. Accordingly, he asserts that the amended order was issued by a juvenile court. The Petitioner has not submitted a copy of the petition to the family court, so the record does not clearly establish the date the petition was filed. The record does contain a summons to the Petitioner's father, issued in 2016, which shows that a proceeding regarding the Petitioner was initiated prior to the Petitioner's birthday in 2016. However, there is no evidence that the court caused a delay which needed to be corrected *nunc pro tunc*. The summons indicates that the hearing was originally scheduled for 2016, after the Petitioner's birthday on 2016. The family court's orders show that the hearing eventually occurred in 2016. Although the hearing was rescheduled, the first hearing was also scheduled to occur after the Petitioner turned years old, and there is no evidence that it was due to an error or delay by the court. Instead, per the Petitioner's own statement, the petition was filed in 2016, less than two months prior to the Petitioner's birthday, and the hearing was scheduled only two months after filing. There is no evidence that the timing of the scheduling was unreasonable or could be considered a delay caused by the court.

The Petitioner also notes that a court can issue a *nunc pro tunc* order "to supply some omission in the entry of what was done at the preceding term," *Wight v. Nicholson*, 134 U.S. 136 (1890), and "correct mistakes and supply defects and omissions," *Gagnon v. U.S.*, 193 U.S. 451 (1904). However, there is no evidence here that the family court was supplying an omission or making records conform to what was actually done previously. The record shows that the family court did not consider any matters in the Petitioner's case until after he turned 18 years old.

Furthermore, regardless of the family court's retention of jurisdiction over the Petitioner past his 18th birthday or authority to issue an order *nunc pro tunc*, the evidence does not show that the family court considered issues relating to his SIJ eligibility when it had jurisdiction over his care and custody *as a juvenile* under Rhode Island law. Even if the family court maintained jurisdiction over the Petitioner under R.I. Gen. Laws Ann. section 14-1-6(a) for certain purposes, he was no longer a child under Rhode Island law after he turned [redacted] years old. 8 C.F.R. § 204.11(a); *see also* 6 USCIS Policy Manual at J.2(D)(4) (stating that a qualifying juvenile court order must be issued under state law). Accordingly, he is not subject to a qualifying order from a juvenile court.

The Petitioner also cites paragraph 24 of the settlement agreement in *Perez-Olano v. Holder*, No. CV 05-3604 (CD. Cal. 2005), which prevents USCIS from denying or revoking the approval of certain SIJ petitions based on age or dependency status if the petitioner was less than 21 years of age and the subject of a valid juvenile court dependency order at the time the petition was filed. *See Perez-Olano v. Holder*, No. CV 05-3604, 7-8 (CD. Cal. 2005) (Settlement Agreement). The Petitioner contends that "[t]he spirit of the *Perez-Olano Settlement Agreement* is that USCIS cannot deny a petitioner's application because he or she has aged out. In that spirit, USCIS may not deny Petitioner's application . . . ." The Petitioner's reliance on the *Perez-Olano* settlement agreement is misplaced, as he misinterprets paragraph 24 of the agreement. The *Perez-Olano* settlement agreement related to a class action suit involving SIJ petitions that had been denied, revoked, or terminated because the SIJ petitioners' valid dependency orders had been terminated due to age before they filed their petitions. USCIS Policy Memorandum PM-602-0117, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* 2 (June 25, 2015), https://www.uscis.gov/laws/policy-memoranda. The Stipulation to the *Perez-Olano* settlement agreement, executed in March 2015, clarifies that under the agreement, USCIS may not deny, revoke, or terminate an SIJ petition "if, at the time of filing [of the petition], (1) [the SIJ petitioner] is or was under 21 years of age, unmarried, and otherwise eligible, *and* (2) [he or she] 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." (Emphasis added). Thus, contrary to the Petitioner's assertions on motion here, in order to invoke protection under *Perez-Olano*, an SIJ petitioner must have been *both* under 21 years *and* the subject of a valid dependency or custody order at the time of filing. The Petitioner does not meet the second prong to trigger the protections afforded under *Perez-Olano*, as he was not subject to a valid custody order from a juvenile court at the time he filed his SIJ petition.

B. The Order Lacks a Qualifying Determination that Parental Reunification is Not Viable

Additionally, although not raised by the Director, the family court's order lacks a qualifying determination that the Petitioner's "reunification with 1 or both of [his] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law," as section 101(a)(27)(J)(i) of the Act requires. The determination regarding parental reunification must be made under state child welfare laws. 6 USCIS Policy Manual, *supra*, at J.2(D)(4), J.3(A)(2). The court order itself should establish that the determination was made under state law, and state court orders that only cite or paraphrase immigration law and regulations will not suffice. *Id.* at J.3(A)(2).

In its amended order, the family court found that the Petitioner's reunification with his father was not viable because his father "abandoned and neglected him for at least eight years, and was abusive to him until his father left the household when the [Petitioner] was ten years old." However, the family court did not cite to any Rhode Island law on abandonment, neglect, or abuse, or any other relevant state child welfare law, establishing the basis for its findings. *Id.* at J.3(A)(2) (stating that the court order should establish that the determination was made under state law). The record does not contain the underlying petition for guardianship or other relevant evidence to establish the basis in Rhode Island law for the family court's findings. Consequently, the order lacks a qualifying determination that parental reunification is not viable, as section 101(a)(27)(J)(i) of the Act requires.

C. The Order Lacks a Qualifying Declaration of Dependency or Placement of Custody

The family court's order also does not contain the requisite dependency or custody determination. An SIJ must be declared dependent upon a juvenile court, or be legally committed to, or placed under the custody of a state agency or department, or of an individual or entity appointed by a state or juvenile court. Section 101(a)(27)(J)(i) of the Act. A juvenile court's dependency declaration must be made in accordance with state law governing such declarations. 8 C.F.R. § 204.11(c)(3). The juvenile court should use language establishing that the determination was made under state law. 6 USCIS Policy Manual, *supra*, at 13(A)(2). The order should not simply mirror or cite to immigration law and regulations. *Id.* Here, the amended order briefly states that the Petitioner "is dependent on this Court," but does not reference any state law on juvenile dependency under which the family court's determination was made. Consequently, the order lacks a qualifying dependency declaration under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(3).

D. USCIS' Consent

Furthermore, the record does not show that USCIS' consent to the Petitioner's SIJ classification is warranted, as section 101(a)(27)(J)(iii) of the Act requires. In order to exercise our consent function, we must determine that the juvenile court order or supporting evidence provides a reasonable factual basis for the court's findings. 6 USCIS Policy Manual, *supra*, at J.2(D)(5). We generally defer to juvenile courts on matters of state child welfare law and we do not reweigh the evidence to determine whether a child was subjected to abuse, neglect, abandonment, or a similar basis under state law. *Id.* at J.2(A), J.2(D)(5). While template orders that merely recite the Act and regulations

will not suffice, juvenile court orders that contain or are supplemented by judicial findings of fact are generally sufficient to establish a reasonable basis for the court's order and the judicial or administrative best-interest determination. *Id.* at J.3(A).

In this case, the family court's order does not contain a reasonable factual basis for the court's determination that it would not be in the Petitioner's best interest to return to Guatemala. The family court indicated that returning to Guatemala would not be in the Petitioner's best interest due to his father's abandonment, abuse, and neglect, and that it is in his best interest to remain in the United States with his mother. However, a court's finding that a particular custodial placement is the best alternative for a petitioner in the United States does not necessarily establish that a placement in the petitioner's country of nationality would not be in the child's best interest. *See* 6 USCIS Policy Manual, *supra*, at J.2(D)(3). The record does not show that the court considered whether there are any caregivers available for the Petitioner in Guatemala. *See id.* (explaining that a best-interest determination generally involves a consideration of the best custodial placement for a child, including with any family remaining in the child's native country).

E. Full Faith and Credit

The Petitioner further asserts that we are required to give the family court's order "full faith and credit." However, the full faith-and-credit provisions of 28 U.S.C. § 1738 apply to courts, not federal administrative agencies such as USCIS. *See NLRB v. Yellow Freight Systems, Inc.*, 930 F.2d 316, 320 (3d Cir. 1991), *cert. denied*, 502 U.S. 820 (1991) ("federal administrative agencies are not bound by section 1738 because they are not 'courts'"); *American Airlines v. Dept. of Transportation*, 202 F.3d 788, 799 (5th Cir. 2000) *cert. denied*, 530 U.S. 1284 (2000) (finding that 28 U.S.C. § 1738 did not apply to the Department of Transportation because it is "an agency, not a 'court'"). Regardless, we do not question the validity of the family court's orders in Rhode Island and we generally defer to state courts on matters of state child welfare law. 6 USCIS Policy Manual, *supra*, at J.2(A). However, the family court's orders are deficient for SIJ purposes under federal law as they do not meet the SIJ requirements. The orders were not issued by a juvenile court and lack qualifying determinations under state law regarding parental reunification and dependency or child custody.

III. CONCLUSION

The family court's orders were not issued by a juvenile court, lack a qualifying determination that parental reunification is not viable, and do not contain a qualifying declaration of dependency or placement of child custody. Also, USCIS' consent to the Petitioner's SIJ classification is not warranted. Consequently, the Petitioner is ineligible for SIJ classification.

ORDER: The appeal is dismissed.

Cite as *Matter of C-J-M-G-M-*, ID# 799394 (AAO Jan. 17, 2018)