U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5423943

Date: MAR. 4, 2021

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is now before us on appeal. Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners must establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

Petitioners bear the burden of proof of demonstrating their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria and establishes that the juvenile court order was sought in proceedings granting relief from parental maltreatment. Section 101(a)(27)(J)(i)-(iii) of the Act. *See also Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 2, 6-7 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.,* 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

A. Relevant Facts and Procedural History

In 2017, when the Petitioner was 17 years old, the District Court in [redacted] Texas (District Court) issued an *Order of Declaratory Judgment and Findings* (original judgment) in which it made findings relevant to his SIJ eligibility:

> 1. This District Court of the State of Texas has subject matter to enter Declaratory Judgments to declare rights, status, and other legal relations regarding those persons over whom this court has personal jurisdiction.
>
> 2. This Court has personal jurisdiction over [the Petitioner] as he resides within the geographical boundaries of the State of Texas.
>
> . . .
>
> 13. That [the Petitioner] is dependent upon this juvenile court in accordance with the laws of the State of Texas while such child is under the jurisdiction of this Court.

The District Court determined that the Petitioner's father abused and neglected him, and it cited relevant Texas Family Code provisions and summarized the father's conduct underlying its determination. Likewise, the court determined that the Petitioner's mother neglected him. The court then determined that the Petitioner's reunification with his father was not viable due to abuse and neglect, and reunification with his mother was not viable due to neglect. Finally, the court determined that it was not in the Petitioner's best interest to return to Guatemala, his country of nationality, due to the history of parental maltreatment, the lack of support, and the lost opportunity to finish his education.

In March 2017, based on this order, the Petitioner filed his SIJ petition.

In 2018, the District Court issued an *Order Nunc Pro Tunc of Declaratory Judgment and Findings* (*nunc pro tunc* judgment) that both reiterated and elaborated the findings in the original judgment. The *nunc pro tunc* judgment provided, in relevant part:

> 13. That [the Petitioner] is dependent upon this juvenile court while such child is under the jurisdiction of the Court pursuant to Tex. Govt. Code § 24.601(a) and is acting as a "juvenile court" insofar as it has the responsibility under Tex. Govt. Code § 24.601(b)(4) for cases involving "child welfare, custody, support, and reciprocal support, dependency, neglect, and delinquency." This Court looks to sections 311.011 and 311.023 of the Tex. Govt. Code to determine the meaning of "dependency" and finds [the Petitioner] dependent on this court due to the history of abuse and neglect and the factual findings found by the Court.

The Director denied the SIJ petition, concluding that the Petitioner had not established that the District Court made a qualifying declaration of dependency or custodial placement, as required by section

101(a)(27)(J)(i) of the Act. Specifically, the Director concluded that the record did not establish that the District Court "declared [the Petitioner] dependent or made any determination regarding [his] custody under any enforceable provision of Texas law governing juvenile dependency or child custody." On appeal, the Petitioner asserts the District Court's declaratory judgments contain the requisite declaration of dependency. We issued a notice of intent to deny, and the Petitioner submitted a timely response. Upon *de novo* review of the entire record, we will sustain the appeal.

B. The District Court Made a Qualifying Declaration of Dependency

SIJ petitioners 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. The juvenile court's dependency declaration must be made in accordance with state law governing such declarations. 8 C.F.R. § 204.11(c)(3).

In its 2017 declaratory judgment, the District Court declared that the Petitioner was "dependent upon this juvenile court in accordance with the laws of the State of Texas," and in its *nunc pro tunc* judgment, it elaborated that it looked to provisions of the Texas Government Code to determine the meaning of "dependency." Based on language in the orders, the Petitioner has established that the District Court declared him dependent on the court in accordance with Texas state law. Accordingly, the record contains a qualifying dependency declaration, and the Petitioner has overcome the grounds for denial of his petition.

The record also establishes that the District Court entered qualifying parental reunification and best interest determinations and that the nature and purpose of the proceedings were to protect the Petitioner from further neglect.[1] Consequently, the Petitioner has established that he is eligible for and warrants USCIS' consent to his SIJ classification.

ORDER: The appeal is sustained.

[1] As stated above, SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, when a petitioner meets all other eligibility criteria and establishes that the juvenile court or administrative determinations were sought primarily to gain relief from parental maltreatment. Section 101(a)(27)(J)(i)-(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2, 6-7. A declaration of dependency, absent any evidence that actual relief from parental maltreatment was granted, is generally not sufficient to warrant USCIS' consent. *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 7-8 (AAO Oct. 11, 2019) (concluding that USCIS' consent was not warranted, in part, because the Petitioner did not show that the relevant court order provided him with any protective or remedial relief pursuant to applicable child welfare provisions or any other relevant state law). In the present case, the record reflects that the Petitioner was in Federal custody with the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), Division of Unaccompanied Children's Services, when the initial SIJ order was issued. We acknowledge that this placement afforded him protection as an unaccompanied child pursuant to Federal law and obviated the District Court's need to provide him with additional relief from parental maltreatment under Texas state law. *See generally* Homeland Security Act of 2002, Pub. L. 107-296, § 462(b)(1), 116 Stat. 2135, 2203 (2002) (providing that ORR shall be responsible for "coordinating and implementing the placement and care of unaccompanied alien children in Federal custody by reason of their immigration status. . . .").