U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11938227

DATE: MAR. 5, 2021

Motion on Administrative Appeals Office 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 (SIJ petition). The Administrative Appeals Office (AAO) dismissed the subsequent appeal and our prior decision is incorporated here by reference. The matter is now before us on motion to reopen and reconsider. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will grant the motion to reopen and sustain the appeal. Because we are granting the motion to reopen, the motion to reconsider is moot.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). In our prior decision, we dismissed the Petitioner's appeal because the order he submitted, titled JUDGMENT AND FINDINGS OF FACT AND RULING OF LAW (SIJ order), and issued by the Probate and Family Court in Massachusetts (Family Court), did not contain a qualifying parental reunification determination. We held that since neither the SIJ order nor the underlying documents from the Family Court proceeding cited or referenced any Massachusetts state laws under which it made its parental reunification determination, the Petitioner did not meet his burden of establishing that the Family Court made a qualifying determination that parental reunification is not viable, as section 101(a)(27)(J)(i) of the Act requires. After we withdrew the Director's consent determination and held that the record provided a reasonable factual basis for the Family Court's reunification determination, we nonetheless held that the Petitioner did not establish that United States Citizenship and Immigration Services (USCIS)' consent was warranted, as section 101(a)(27)(J)(iii) of the Act requires, because he did not have a qualifying parental reunification determination.

On motion, the Petitioner meets the requirements for a motion to reopen under 8 C.F.R. § 103.5(a)(2) and submits new evidence that demonstrates his eligibility for SIJ classification. The Petitioner submits an amended SIJ order issued *nunc pro tunc*. The new order defines "neglect" under Mass. Code of Regs. Section 2.00. The court goes on to state, "The Probate and Family Court uses these definitions as clarified by case law to assess parental behavior and its impact on children in the cases before it. This court finds that [the Petitioner] has been neglected by both of his parents." Based on this new evidence, and in conjunction with the original SIJ order, the Petitioner has met his burden on

motion to establish that the Family Court made a qualifying determination that parental reunification is not viable, as section 101(a)(27)(J)(i) of the Act requires. Since the Petitioner now has a qualifying parental reunification determination and meets the other eligibility requirements, USCIS' consent is warranted.

The Petitioner has submitted sufficient evidence to meet his burden of proof to establish that he is eligible for, and merits USCIS' consent to a grant of, SIJ classification.

ORDER: The motion to reopen is granted and the appeal is sustained.