U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 05506804

Date: SEP. 12, 2024

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile) (SIJ petition), concluding that the record did not establish that the state court had jurisdiction over the Petitioner's custody as a juvenile under state law and the state court's order therefore lacked a qualifying finding regarding parental reunification. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that they are unmarried, under 21 years old, and have been subject to a state juvenile court order determining that they cannot reunify with one or both 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(b). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(iii) of the Act.

II. ANALYSIS

A. Relevant Facts and Procedural History

In [redacted] 2016, the [redacted] Family Court in New York issued an order appointing a guardian for the Petitioner in proceedings brought under section 661 of the New York Family Court Act (N.Y.

Fam. Ct. Act) and sections 1701 through 1707 of the New York Surrogate's Court Procedure Act (N.Y. Surr. Ct. Proc. Act). Relying on information from the Petitioner that he was born in [redacted] 1998, which would have made him 18 years old at the time of the guardianship order, the Family Court indicated that "the appointment shall last until the [Petitioner's] 21st birthday . . . ." In a separate order (SIJ order) issued in [redacted] 2016, the Family Court determined, among other findings, that the Petitioner was "dependent upon the juvenile court in that the Court has accepted jurisdiction over the matter of his Guardianship." The Family Court also found that the Petitioner's reunification with his parents was not viable due to neglect and abandonment and set forth specific factual findings in support of those child welfare grounds. Further, the Family Court concluded that it was not in the Petitioner's best interest to be removed to Bangladesh, his country of origin. In an amended SIJ order, the Family Court indicated that its finding that the Petitioner was dependent on the court was based in sections 115 and 661 of the N.Y. Fam. Ct. Act and section 1707 of the N.Y. Surr. Ct. Proc. Act. The Family Court also cited section 1012(f)(i) of the N.Y. Fam. Ct. Act in support of its finding that the Petitioner's reunification with his parents was not viable due to neglect, and section 384-b(5)(a) of the New York Social Services Law in support of its finding about abandonment. The Family Court also discussed specific facts underlying its determinations.

Based on the Family Court's orders, the Petitioner filed his SIJ petition in April 2017. In response to a notice of intent to deny from the Director, the Petitioner submitted a second amended SIJ order, in which the Family Court provided additional details about the basis for its parental reunification and best interest findings. The Director denied the petition for lack of a qualifying finding regarding parental reunification. The Director concluded that the evidence did "not establish that the state court had jurisdiction under state law to make a legal conclusion about returning [the Petitioner] to [his] parent(s)' custody" because he had already reached the age of majority under New York law when the Family Court orders were issued. Subsequent to the filing of the appeal, the District Court for the Southern District of New York issued a judgment in *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019). Pursuant to that judgment, we withdraw the Director's basis for denial. However, the Petitioner remains ineligible for SIJ classification on another ground.

B. S.D.N.Y. Judgment and Applicability to the Petitioner

In *R.F.M. v. Nielsen*, the district court determined that USCIS erroneously denied plaintiffs' SIJ petitions based on USCIS' determination that New York Family Courts lack jurisdiction over the custody of individuals who were over 18 years of age. 365 F. Supp. 3d at 377-80. The district court also held that USCIS erroneously required that the New York Family Court have authority to order the return of a juvenile to the custody of the parent(s) who abused, neglected, abandoned or subjected the juvenile to similar maltreatment in order to determine that the juvenile's reunification with the parent(s) was not viable pursuant to section 101(a)(27)(J)(i) of the Act. 365 F. Supp. 3d at 378-80.

The district court granted the plaintiffs' motion for summary judgment and for class certification. The court's judgment certified a class including SIJ petitioners whose SIJ orders were "issued by the New York family court between the petitioners' 18th and 21st birthdays" and whose SIJ petitions were denied on the ground that the Family Court "lacks the jurisdiction and authority to enter SFOs [Special Findings Orders] for juvenile immigrants between their 18th and 21st birthdays." *R.F.M. v. Nielsen*, Amended Order, No. 18 Civ. 5068 (S.D.N.Y. May 31, 2019).

In accordance with the district court's orders in *R.F.M. v. Nielsen*, we withdraw the Director's determination that the Family Court in this case lacked jurisdiction over the custody of individuals between 18 and 21 years of age. The Petitioner had provided information to the Family Court indicating that he was under 21 years of age at the time of adjudication. If that information had been accurate, the Family Court would have had jurisdiction over the Petitioner as a juvenile and could have made a qualifying parental reunification determination.

C. The Petitioner Has Not Established that he was Under 21 Years of Age at the Time of Filing

During our adjudication of the Petitioner's appeal, we issued two notices of intent to dismiss (NOID) to notify him of derogatory information of which he was unaware and offer an opportunity to respond. Both related to the lack of sufficient evidence to show that the Petitioner was under the age of 21 years at the time of filing his SIJ petition, as section 101(a)(27)(J) (i) of the Act requires.

In our first NOID, issued in February 2022, we notified the Petitioner that he had overcome the Director's basis for denial but that an additional ground of ineligibility remained. We explained that the birth certificate he submitted, which indicated that his date of birth was in [redacted] 1998, appeared to have been altered and that his true date of birth was in [redacted] 1990. In response to our first NOID, the Petitioner submitted additional evidence, including a personal affidavit explaining that he did not realize there was an error in the registration number on his birth certificate and that the error was out of his control; a copy of a new, "corrected" birth certificate issued in 2008 but signed and sealed in April 2022 (corrected birth certificate); a letter from the chairman of the [redacted] Union Parishad stating that his office mistakenly recorded the wrong birth registration number on his original birth certificate and that his true date of birth is in [redacted] 1998; childhood vaccination records; medical records regarding his birth from the Government of the People's Republic of Bangladesh Department of Family Planning, Mother and Child Welfare Center; a letter from his uncle stating that he was present in the hospital at the time of the Petitioner's birth in [redacted] 1998; and educational records, including identification and a grade report from [redacted] High School and a Primary Education Final Examination 2010 certificate showing he passed grade five exams and graduated from the [redacted] Government Primary School in 2010.

Discrepancies remain between the birth certificate the Petitioner submitted as initial evidence and the corrected birth certificate he provided in response to our first NOID. The first birth certificate he submitted, bearing a registration number beginning with 1990, indicates in the letterhead that it was issued by the "Office of the Registrar of Birth and Death." Although the corrected birth certificate bears a registration number beginning with 1998, it states it was issued by the "Office of the Birth and Death Registrar." The reason for the difference in the name of the issuing entity is not clear, particularly in light of the letter he submits from the chairman of the [redacted] Union Parishad that the same office issued both certificates and made a typographical error in the first.

Furthermore, while both birth certificates indicate in the letterhead that the issuing office is located in [redacted] Union Parishad, [redacted] variations appear in the spelling of those locations. The first birth certificate states the Petitioner's permanent address was in [redacted] and the two signature stamps at the bottom of the corrected certificate also use this spelling, differing from the name of the same location listed in the letterhead. Similarly, one signature stamp on the corrected birth certificate states it is from the [redacted] Union Parishad, as does the registrar office's seal, while the

Petitioner's permanent address on the corrected birth certificate is listed as both [redacted] and [redacted] Additionally, the letter from the chairman lists [redacted] in the letterhead but [redacted] in the body of the document. The reason for the multiple differences in spelling of these locations on official documents purportedly issued by the same authority is not clear. Due to unresolved discrepancies, both birth certificates and the letter from the chairman of the [redacted] Union Parishad merit reduced evidentiary weight.

The record also does not explain why the corrected birth certificate contains different formatting and substantive details from the original. For example, the corrected birth certificate lists the Petitioner's birth order as the fifth child, while the first birth certificate does not contain this information; the corrected birth certificate writes the date of birth "In Word" as [redacted] 1998" while the first birth certificate wrote it out fully as [redacted] Nineteen Hundred Ninety Eight"; and the corrected birth certificate bears the same 2008 date of issue as the first, but indicates it was prepared and verified in 2022. Although the Petitioner states that the dates on the corrected birth certificate are reasonable because he requested a copy of it in 2022, the different format and contents do not reflect that this is a copy of an original issued in 2008 rather than a newly prepared and issued document. The letter the Petitioner submits from the Chairman of the [redacted] Union Parishad states his office made a mistake in the registration number on the first birth certificate and has since corrected it, but the reasons for other changes and inconsistencies between the documents is not clear.

After reviewing the Petitioner's response to our first NOID, USCIS conducted an overseas investigation to verify evidence he submitted to establish his date of birth. We issued a second NOID in August 2024 to notify him of further derogatory information resulting from the investigation.

We advised the Petitioner that investigators visited the [redacted] Government Primary School to verify the Primary Education Final Examination 2010 certificate the Petitioner submitted as supporting evidence to prove his age. The investigators spoke with M-A-H-,[1] who has been the headmaster of the school since 2007. M-A-H- informed investigators that he and several teachers searched school records but the Petitioner's name did not appear in the school's records of attendance in 2010, students who appeared for grade five exams in 2010, or students who enrolled in or studied at the school any time between 2003 and 2010. M-A-H- also advised that the Primary Education Final Examination 2010 certificate the Petitioner submitted was not genuine and was not issued by the school. He noted discrepancies between the Petitioner's certificate and certificates typically issued by the school, including that the teacher who signed the certificate did not work at the school in 2010 and the listed "roll number" did not correspond with the roll numbers used for grade five in 2010. Further, he noted the format listed for the grades the Petitioner claims to have earned was different from the grading format used in 2010: the certificate states his result was "GPA 4.50," but the GPA system was not introduced for grade five until 2011 and a certificate bearing genuine results would instead list the student's applicable division. M-A-H- signed a statement certifying that no record of the Petitioner's name was found in his school register. Based on the results of the investigation, USCIS officials determined that the Primary Education Final Examination 2010 certificate the Petitioner submitted was fake and that he provided it in an effort to hide his true date of birth.

[1] We use initials to protect confidential information.

In response to our second NOID, the Petitioner submits a brief. He contends that we abused our discretion by "failing to satisfy the requisite preponderance of the evidence standard as required." He alleges that we provided no evidence to support the results of USCIS' investigation and that the results are "hearsay included with intent to undercut evidence submitted by Petitioner . . ."[2] and do not meet the preponderance of the evidence standard. Further, he argues that M-A-H-'s statements are uncorroborated and that we should have provided a copy of his statement certifying the information he provided. Additionally, he asserts we disregarded other probative evidence, including the documents he submitted in response to our first NOID and the birth certificate verified by the government of Bangladesh, and made a "blanket conclusion" without analysis[3] that he was over the age of 21 years when he filed his SIJ petition.

The burden in these proceedings is on the Petitioner to establish by a preponderance of the evidence that he is eligible for the benefit he seeks. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In response to our NOID notifying him of derogatory information discovered during a government investigation, the Petitioner does not specifically dispute the findings or provide any evidence to rebut the results. Although he argues that the statements of M-A-H- are uncorroborated and that an assertion that he submitted a fake document "is a serious accusation," he does not clearly state that the findings are incorrect, provide a possible explanation for M-A-H-'s statements about his absence in school records, or submit any evidence to show that he did attend [redacted] Government Primary School. Instead, he states that "[r]egardless, in any event," he already submitted his birth certificate "which should have qualified as best evidence of his true date of birth . . . ." As we have explained, the first birth certificate he submitted contained a registration number that conflicted with the listed date of birth, and the corrected birth certificate introduces new discrepancies. Both birth certificates and the explanatory letter from the chairman of the [redacted] Union Parishad merit reduced evidentiary weight and are insuffient to establish the Petitioner's age. Although the regulation allows a petitioner to submit secondary evidence of age, such evidence must establish the petitioner's age in USCIS' discretion. 8 C.F.R. § 204.11(d)(2).

As for the Petitioner's claim that we did not provide evidence to corroborate the results of the USCIS investigation, USCIS is not required to provide a petitioner with an exhaustive list or documentation of derogatory information as long as it advises the petitioner of that information and provides an opportunity to respond. *See, e.g., Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) (explaining that 8 C.F.R. § 103.2(b)(16)(i) "does not require USCIS to provide, in painstaking detail, the evidence of fraud it finds" and that a NOID provided sufficient notice and opportunity to respond to the derogatory information); *Hassan v. Chertoff*, 593 F.3d 785, 787 (9th Cir. 2010) (concluding that 8 C.F.R. § 103.2(b)(16)(i) requires only that the government make a petitioner aware of the derogatory information used against them and provide them with the opportunity to explain; "[t]he regulation . . . requires no more of the government."); *Zizi v. Field Office Director*, 753 Fed. Appx. 116, 117 (3rd Cir. 2019) (stating that 8 C.F.R. § 103.2(b)(16)(i) "does not require the Government to provide 'actual

[2] The formal rules of evidence do not apply in immigration proceedings. *Matter of Vides Casanova*, 26 I&N Dec. 494, 499 (BIA 2015) (citing *Matter of D-R-*, 25 I&N Dec. 445, 458 (BIA 2011); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039-40, 1050-51 (1984)).

[3] The NOID was not a final decision in the Petitioner's case. We issued it to notify the Petitioner of derogatory information and allow him an opportunity to respond with arguments and rebuttal evidence he would like us to consider in our final adjudication.

documents[;]"' instead, it "requires only that [the] petitioner 'be advised' of derogatory information and 'offered an opportunity to rebut the information and present information [o]n his . . . own behalf").

We have considered all of the evidence the Petitioner submitted before the Director and on appeal, including his response to both of our NOIDs. Because the birth certificates and explanatory letter from the chairman of the [redacted] Union Parishad merit reduced evidentiary weight, they are not sufficient to establish the Petitioner's date of birth. The Primary Education Final Examination 2010 certificate he submitted to show he attended [redacted] Government Primary School has been found to be fraudulent, and the Petitioner has not submitted evidence to rebut that determination. The remaining evidence is insufficient to overcome these concerns. We acknowledge the Petitioner's claims in his personal statement, but the supporting evidence does not resolve the discrepancies in the record. The information on the childhood vaccination card was all entered in the same ink and handwriting, despite purportedly documenting multiple separate vaccinations administered over the course of approximately one year. The certification letter of his birth from the Mother and Child Welfare Center states in the letterhead that it was issued by the "People's *Repiblic* of Bangladesh" in [redacted] and states in the body that he was born in [redacted] (emphases added to highlight spelling differences). Although we acknowledge this is an English translation of an original document, both versions bear the same signature and stamp, attestation, and seal, and both are printed on the same type of colored paper, suggesting issuance by a single writer.

The [redacted] High School Result Sheet, which bears original signatures and does not appear to be an English translation of a document originally in another language, contains misspellings that reduce its evidentiary weight, including "Mathematies" and "Highest in *calss*." Similarly, the [redacted] High School identification card, a copy of an original document issued in English, contains misspellings and formatting issues such as "*Incase* of lost," "Anyone who finds this lost ID card, is *reauested* to return it to the *princpal*," and "This *id* card," conflicting with the use of "ID" elsewhere on the document. We have reviewed the supporting letter from the Petitioner's uncle stating he was present at the time of the Petitioner's birth, but it is not sufficient in light of other inconsistencies in the record.

As a result of the concerns described above, the record lacks sufficient evidence to support the Petitioner's claim that his true date of birth is in [redacted] 1998 rather than [redacted] 1990. He has not provided evidence to rebut the findings of the USCIS investigation and noticeable discrepancies reduce the evidentiary weight of several documents the Petitioner submitted. Due to the unresolved inconsistencies in the record regarding the Petitioner's date of birth, the Petitioner has not demonstrated by a preponderance of the evidence that he was under 21 years of age at the time he filed his SIJ petition, as required. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b). The Petitioner has not met his burden of establishing eligibility for SIJ classification.

ORDER: The appeal is dismissed.