U.S. Department of Justice

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Name: URIAS-VELASQUEZ, EDUARDO **A 206-734-672**

Date of this notice: 10/11/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
O'Connor, Blair
Cole, Patricia A.
Greer, Anne J.

Userteam: Docket

File: A206-734-672 – Houston, TX

Date: OCT 11 2019

In re: Eduardo URIAS-VELASQUEZ

IN RESCISSION PROCEEDINGS UNDER SECTION 246 OF THE IMMIGRATION AND NATIONALITY ACT

APPEAL

ON BEHALF OF RESPONDENT: Victoria Mora, Esquire

APPLICATION: Adjustment of status

On July 28, 2017, an Immigration Judge rescinded the respondent's adjustment of status. The respondent, a native and citizen of El Salvador, now appeals. The respondent's request for oral argument is denied pursuant to 8 C.F.R. § 1003.1(e)(7). The appeal will be sustained.

We review an Immigration Judge's findings of fact, including findings regarding witness credibility and what is likely to happen to the respondent, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of law, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On October 8, 2014, at the age of 20 years, the respondent obtained an Order of Dependency and Findings from the 410th District Court of Montgomery County, Texas ("410th District Court"). On October 28, 2014, he filed a Form I-360 (Petition for Amerasian, Widower or Special Immigrant) and a Form I-485 (Application to Register Permanent Residence or Adjust Status). On February 2, 2015, the United States Citizenship and Immigration Services ("USCIS") approved the petition, and on October 19, 2015, the USCIS granted adjustment of status. On February 29, 2016, the USCIS issued a Notice of Intent to Rescind the respondent's adjustment of status based on his age when he obtained the Order of Dependency.

The Attorney General has the authority to rescind a grant of adjustment of status within 5 years of the grant if the alien was not eligible for adjustment of status. 8 U.S.C. § 246(a); 8 C.F.R. 246.1. "In rescission proceedings, the Government bears the burden of proving ineligibility for adjustment of status by clear, unequivocal, and convincing evidence." *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 337 (BIA 1991) (citing *Waziri v. INS*, 392 F.2d 55 (9th Cir. 1968); *Matter of Pereira*, 19 I&N Dec. 169 (BIA 1984)).

The issue in this case involves the regulatory definition of "juvenile court." The regulations define "juvenile court" as "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). The Immigration Judge determined that the respondent adjusted status as a Special Immigrant Juvenile ("SIJ") based on the 410th District Court's Order of Dependency issued when the court did not have jurisdiction over the respondent (IJ at 2). *See* section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J). The Immigration Judge found that when the court

issued the Order of Dependency, the respondent was an adult under Texas law, which defines a "child" or "minor" as "a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes" (IJ at 2). Tex. Fam. Code § 101.003(a). The Immigration Judge also relied on *Matter of J.L.E.O.*, 2011 WL 664642 (Tex. Ct. App. Feb. 24, 2011), a state case holding that juvenile courts in Texas do not have jurisdiction to issue custody determinations for SIJ applicants after an applicant reaches 18 years of age (IJ at 2-3). *Id.* at *2.

The respondent counters on appeal that the 410th District Court of Montgomery County did have jurisdiction over his Order of Dependency because it is a court of general jurisdiction. According to the respondent, although a District Court may act as a "juvenile court" under the Texas Constitution, the state constitution does not place any age restrictions on a District Court's jurisdiction (Respondent's Br. at 9-11). The respondent also asserts that the Immigration Judge erred in referencing the Texas Family Code because the 410th District Court issued the Order of Dependency pursuant to its authority under the Uniform Declaratory Judgement Act, not pursuant to the Texas Family Code (Respondent's Br. at 11-12). The respondent argues that the Immigration Judge erred in concluding that the 410th District Court's Order of Dependency was not entitled to full faith and credit (IJ at 3; Respondent's Br. at 24-33).

We are persuaded by the respondent's appellate arguments. Like federal courts, Immigration Judges and the Board must give "the same full faith and credit" to state court judgments "as they have by law or usage in the courts of such State." 28 U.S.C. § 1738; *see also Matter of Adamiak*, 23 I&N Dec. 878, 880 (BIA 2006) (recognizing the Board's obligation to give full faith and credit to state court judgments); *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1380 (BIA 2000) (same). The Immigration Judge should not have second guessed whether the 410th District Court had jurisdiction to issue the Order of Dependency.[1]

As the respondent points out, the District Courts in Texas are courts of general jurisdiction; thus, a District Court can only be limited from adjudicating an issue when Texas law directs so (Respondent's Br. at 9-10). *See* Tex. Const. art. V, § 8. Because the Texas court system does not have separate "juvenile courts," Texas law provides that "[e]ach district court, county court, and statutory country court exercising any of the constitutional jurisdiction of either a country court or district court has jurisdiction over juvenile matters and may be designated a juvenile court" (Respondent's Br. at 10). Tex. Gov't Code Ann. § 23.001. The result is that any Texas District Court can be a juvenile court (Respondent's Br. at 10). For this reason also the Immigration Judge

[1] We also are not persuaded by the dissent's reliance on *Budhathoki v. Nielson*, 2018 WL 3649655 (5th Cir. August 1, 2018), for the proposition that we need not give full faith and credit to the 410th District Court's Order of Dependency because federal agencies are obligated to review state court orders for compliance with federal requirements. The central issue in that case was whether a Texas child support order was sufficient to meet the "custody and care" determination for SIJ status because the order did not contain a declaration of dependency. This is in contrast to the respondent's case in which we have a clear declaration of dependency.

should not have questioned the District Court's authority to issue an order relating to the juvenile matter in the respondent's case.[2]

The respondent sought, and the 410th District Court issued, the Order of Dependency pursuant to the Texas Uniform Declaratory Judgement Act and not pursuant to the Texas Family Code (Respondent's Br. at 12; Exh. 1 at 27). Under the Texas Uniform Declaratory Judgement Act, a judge has wide discretion to declare rights and status because there are no limits regarding age or types of declarations made (Respondent's Br. at 12). Tex. Civ. Prac. & Rem. Code Ann. § 37.003 (a), (c). Accordingly, we are not convinced by the Immigration Judge's use of the definition of "child" from the Texas Family Code to find that the 410th District Court did not act in accordance with state law.[3]

As stated, the Government bears the burden of proving ineligibility for adjustment of status by clear, unequivocal, and convincing evidence. We agree with the respondent that the Immigration Judge incorrectly placed the burden on the respondent to demonstrate his eligibility for adjustment of status based on his SIJ status instead of requiring the DHS to establish that the respondent was not eligible for adjustment of status at the time it was granted (Respondent's Br. at 6, 19-20).

Moreover, our case law reflects that rescission typically is limited to cases of fraud or when the petitioner did not qualify for adjustment of status *under the Act itself* (Respondent's Br. at 21) (emphasis added). *See e.g., Matter of Hernandez-Puente*, 20 I&N Dec. at 337 (affirming rescission decision because the applicant was over the age of 21 years and married, and did not qualify as a "child" under the Act at the time of adjustment of status); *Matter of Awwal*, 19 I&N Dec. 617, 622 (BIA 1988) (affirming rescission decision because the adjustment of status was gained through a sham marriage by the applicant's mother). In the respondent's case, however, there was no indication of fraud or new facts indicating that the respondent was not statutorily eligible for SIJ status at the time he adjusted (Respondent's Br. at 22 n.9).

Finally, to the extent that there is any ambiguity in the law, primarily whether the 410th District Court was a "juvenile court" with jurisdiction to issue the dependency order, the rule of lenity

[2] The Order of Dependency explicitly states that "no other court has continuing, exclusive jurisdiction of this case" (Exh. 1 at 24). Along these lines we note the respondent's reference to a decision of the USCIS Ombudsman. Around the time of the respondent's adjustment, the Ombudsman instructed that whether a court exercised its dependency jurisdiction in accordance with State law is for the State court, not the USCIS, to determine (Respondent's Br. at 10 n.2 (citing Citizenship and Immigration Services Ombudsman, *Ensuring Process Efficiency and Legal Sufficiency in Special Immigrant Juvenile Adjudications*, Dec. 11, 2015).

[3] Similarly, the Immigration Judge's reliance on *Matter of J.L.E.O.* is misplaced as the order in that case originated under the Texas Family Code as a suit affecting the parent-child relationship. *See Matter of J.L.E.O.*, 2011 WL 664642 *1 (citing Tex. Fam. Code § 101.032). Additionally, unlike in the respondent's case, *Matter of J.L.E.O.* states that the court that issued the order of dependency was a family district court with jurisdiction over all juvenile matters under its jurisdiction. *Id.* at *1 n.3.

obligates us to construe any ambiguity in favor of the respondent. *See, e.g., Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004) (holding that any lingering ambiguities in the language of the Act are to be resolved in an alien's favor); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987) (noting the "longstanding principle of construing any lingering ambiguities in deportation proceedings in favor of the alien"); *INS v. Errico*, 385 U.S. 214, 225 (1966) ("We resolve doubts in favor of [the alien] because deportation is a drastic measure.").

For these reasons we conclude that the DHS did not meet its burden to show by clear, unequivocal, and convincing evidence that the respondent was not eligible for adjustment of status based on his SIJ status. We reverse the Immigration Judge's decision to rescind the respondent's adjustment of status.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The Immigration Judge's July 28, 2017, decision rescinding the respondent's adjustment of status is vacated.

FURTHER ORDER: The rescission proceedings against the respondent are terminated.

FOR THE BOARD

File: A206-734-672 – Houston, TX

Date: OCT 11 2019

In re: Eduardo URIAS-VELASQUEZ

DISSENTING OPINION: Blair T. O'Connor

I respectfully dissent. While I share my colleagues' concern for giving full faith and credit to state court judgments, there is a well-recognized limitation to this principle that they have overlooked, and that is that "'a judgment of a court in one State is conclusive upon the merits in [other U.S. or State courts] only if the court in the first State had power to pass on the merits – had jurisdiction, that is, to render the judgment.'" *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Assn.*, 455 U.S. 691, 704 (1982) (quoting *Durfee v. Duke*, 375 U.S. 106, 110 (1963)).[1] This is precisely what the Immigration Judge found in this case – that the Texas district court lacked jurisdiction to enter the dependency order in the respondent's case because the respondent was an adult, and no longer a child, at the time the order was entered. The Immigration Judge's decision in this regard is in accord with cases from both the Texas Courts and the U.S. Court of Appeals for the Fifth Circuit, under whose jurisdiction this case arises. Accordingly, I would find that the Texas district court's dependency order, entered almost three years after the respondent turned 18 years old, is not entitled to full faith and credit for immigration purposes, given that the Texas court lacked jurisdiction to enter the order in the first place.

The requirements for Special Immigrant Juvenile (SIJ) status are set forth in 8 C.F.R. § 204.11 and include, among other things, that the alien be under 21 years of age and have "been declared dependent upon a juvenile court located in the United States *in accordance with state law governing such declarations of dependency*, while the alien was in the United States and *under the jurisdiction of the court*." 8 C.F.R. § 204.11(c)(1) & (3) (emphasis added). A "juvenile court" is defined as "a court located in the United States *having jurisdiction under State law to make judicial determinations about the custody and care of juveniles*." 8 C.F.R. § 204.11(a) (emphasis added). Finally, among the documents aliens are directed to submit in support of a SIJ petition are "[a] juvenile court order, *issued by a court of competent jurisdiction* located in the United States, showing that the court has found the beneficiary to be dependent upon that court." 8 C.F.R. § 204.11(d)(2)(i) (emphasis added).

The Fifth Circuit has held that the regulations require "both that the court be one of 'competent jurisdiction' and that it have made certain rulings," and that the issue of "[w]hether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary

[1] This is a limitation that we have previously recognized. *See e.g., Matter of Cota-Vargas*, 2006 WL 2008266 *2 (BIA June 5, 2006) ("[A] state court judgment may be disregarded consistent with 28 U.S.C. § 1738 only if an affirmative showing was made that the judgment is void on its face due to the rendering court's lack of jurisdiction over the subject matter of - or parties to - the action, since a refusal to enforce a state court judgment that is void for lack of jurisdiction simply gives it the same effect that it would receive in a court of the rendering state.") (citing *Underwriters National Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Assn.*, 455 U.S. at 704-05 & n.10)).

rulings very much is a question of federal law, not state law, and the agency ha[s] authority to examine the orders for that purpose." *Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018); *see also id.* at 509 ("Thus, a state court must make initial determinations, and the [U.S. Citizenship and Immigration Services] USCIS then considers if they match the requirements for SIJ status."); *id.* at 510 ("A federal agency must be able to review a state court order offered as support for some federal benefit to determine its consistency with the federal requirements."). *Budhathoki* stands squarely for the proposition that the majority appears to reject – that the agency may, and indeed is obligated to, examine a state court order offered in support of a petition for a federal benefit for consistency with the requirements for that benefit. Both USCIS and the Immigration Judge examined the Texas district court's dependency order to see if it was issued by "a court of competent jurisdiction," and concluded that it was not. I submit that this is wholly in accord with the agency's authority.

In *Budhathoki*, the aliens had submitted Texas child support orders in support of their petitions for SIJ status. The Fifth Circuit noted that, although a "child" or "minor" is defined under the Texas Family Code as "a person under 18 years of age," "[i]n the context of child support, 'child' includes a person over 18 years of age for whom a person may be obligated to pay child support." 898 F.3d at 506 (citing Tex. Fam. Code Ann. § 101.003(a) & (b)). Although the Fifth Circuit did not question whether the orders submitted by the aliens were valid support orders, it did question whether they were valid dependency orders for purposes of SIJ status eligibility. As the Fifth Circuit put it, the question before it was "whether the right kind of court issued the right kind of order." *Id.* at 509. In other words, did the agency have "the authority to resolve these two issues about the relevant orders: (1) were they qualifying orders, and (2) [did] the state court ha[ve] jurisdiction to issue them?" *Id.* at 510. Because the Fifth Circuit found that the orders in question were not dependency orders, given that they contained "no declaration of dependency" and in no way addressed the custody or supervision of the minors in question, the court only briefly discussed the jurisdictional question. *Id.* at 510-15.

While the Fifth Circuit "ma[d]e no holding as to jurisdiction," it noted two Texas court of appeals decisions that concluded that, because the alien plaintiffs in question were over the age of 18, "the [Texas juvenile] court no longer had jurisdiction to make determinations about [their] care and custody as required by the SIJ statute." *Id.* at 514 (citing *In re. J.L.E.O.*, 2011 WL 664642 (Tex. App. 2011) and *In re. B.A.L*, 2017 WL 3027660 (Tex. App. 2017)). The respondent here attempts to distinguish *In re. J.L.E.O.* from his case by noting that it involved a petition in a suit affecting the parent-child relationship (SAPCR) brought under the Texas Family Code, while the district court order presented in support of the SIJ petition in his case was entered under the Texas Declaratory Judgment Act (Respondent's Br. at 13-14; Exh. 1D). This argument is meritless. While *In re. J.L.E.O.* may have started out as a SAPCR suit, when the plaintiff lost in the trial court, he "filed a request for a declaratory judgment seeking the SIJS findings." 2011 WL 664642 at *1. It was the denial of declaratory judgment relief that the Texas Court of Appeals reviewed. Moreover, the Fifth Circuit rejected this same argument in *Budhathoki*, where the plaintiffs attempted to distinguish *In re. J.L.E.O.* by arguing that it involved "a suit brought pursuant only to the Texas Declaratory Judgment Act – and not pursuant to any provision of the Texas Family Code." 898 F.3d at 514. The court found this distinction "meaningless" because, "[r]egardless of the procedural mechanism used by th[e] plaintiff [in *In re. J.L.E.O.*], the [Texas] court construed provisions of the Texas Family Code." *Id.* While the Fifth Circuit and the Texas courts have

acknowledged that some states have statutes that extend the jurisdiction of their juvenile courts after the child's eighteenth birthday if a SIJ petition and application for adjustment of status is pending, they have clearly noted that "'Texas has no similar provision.'" *Id.* at 514-15 (citing *In re. J.L.E.O.*, 2011 WL 664642 at *2 n.5). Therefore, as noted by the Fifth Circuit, "there is a three-year gap in Texas between the state-law age of majority (18) after which care and custody can no longer be ordered and the outer limits of the federal regulation for SIJ eligibility." *Id.* at 515 (citation omitted).

I am not unsympathetic to aliens, like the respondent here, who fall in this 3-year gap and who have succeeded in obtaining declaratory judgments from state court judges declaring their dependency on the court. Such aliens clearly satisfy the first eligibility requirement for SIJ status of being "under twenty-one years of age." 8 C.F.R. § 240.11(c)(1). But it is not apparent that they satisfy the third requirement for such status, insofar as they cannot legally be "declared dependent upon a juvenile court . . . *in accordance with state law governing such declarations of dependency*." 8 C.F.R. § 240.11(c)(3)(emphasis added). The Texas Family Code clearly defines a "child" or "minor" as "a person under 18 years of age" for all purposes except for child support orders. Tex. Fam. Code Ann. § 101.003. Child care and custody issues in Texas are solely determined under the Texas Family Code. Tex. Fam. Code Ann. § 107.001 *et seq.* Therefore, regardless of the fact that the respondent's dependency order was obtained as a declaratory judgment, we are still bound to determine whether it was obtained "in accordance with state law governing such declarations of dependency" and "by a court of competent jurisdiction."[2] 8 C.F.R. § 240.11(c)(3) & (d)(2)(i). We are not, as the majority suggests, powerless to examine the state court order for "consistency with the federal requirements" for SIJ status. *Budhathoki v. Nielsen*, 898 F.3d at 510; *see also M.B. v. Quarantillo*, 301 F.3d 109, 111, 114-16 (3d Cir. 2002) (holding that "[b]oth the [SIJ] statute and regulation implicitly require an alien applying for special immigrant juvenile status to be young enough to qualify for a dependency order under state law," and upholding agency's finding that the 19-year-old alien no longer met the jurisdictional age limit of the New Jersey juvenile court).

Here, the record clearly demonstrates that the respondent was one month shy of his 21st birthday at the time of the Texas district court's declaratory judgment order. Given this, Texas district courts had long lost the authority to issue orders regarding the respondent's care and custody under the Texas Family Code, the only statutory authority for making such determinations. Thus, the Texas district court lacked jurisdiction and the authority to declare the respondent a dependent of the court. While I understand (and appreciate) the district court's desire to assist the

[2] In this regard, I reject the respondent's contention that, because his dependency order was obtained as a declaratory judgment by a Texas district court, whose jurisdiction is generally not circumscribed by age, the district court had jurisdiction to declare the respondent a dependent on the court. The sole authority to make determinations regarding the care and custody of children in Texas is found in the Texas Family Code, which defines a child as a person under 18 years of age. While the Texas District Court order here cites to provisions of the Texas Government Code that provide for when a district courts sits as a "family district court," it conspicuously fails to cite to any statutory provision that actually governs care and custody determinations under state law. Because such determinations can only be made for persons under the age of 18, the district court lacked the authority to make that determination in the respondent's case.

respondent in his pursuit of SIJ status, given that he still met the regulatory age requirement for such status, I cannot overlook the fact that the district court was no longer "a court of competent jurisdiction" to enter such an order "in accordance with state law governing such declarations of dependency." 8 C.F.R. § 240.11(c)(3) & (d)(2)(i). Like the Third Circuit, I reject the "contention that the [SIJ] regulation requires that [a dependency order] be accepted for all petitioners under 21 years of age and that the [agency is] denied the authority to consider the [Texas] jurisdictional limit of 18 years of age." *M.B. v. Quarantillo*, 301 F.3d at 116. If Congress or the Texas legislature wishes to close this loophole created by the 3-year gap, then they may so act, but we should not do so by administrative fiat. Accordingly, I dissent.