

STATE OF MICHIGAN
COURT OF APPEALS

In re TM, Minor.

BEAUTY BEGUM, Guardian of TM,

Appellant,

v

SAHARA BEGUM,

Appellee.

UNPUBLISHED

April 9, 2020

No. 350556

Macomb Probate Court

LC No. 2019-230544-GM

Before: SAWYER, P.J., and LETICA and REDFORD, JJ.

PER CURIAM.

Appellant, Beauty Begum, juvenile TM’s guardian, appeals by right the probate court’s order denying the petition for findings of fact to enable TM to apply for special immigrant juvenile (SIJ) status. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

TM was born and reared in Bangladesh. Sometime after his father’s death on June 19, 2018, his mother, Sahara Begum, arranged with a third party for TM to travel to the United States to live with Beauty, a distant relative. TM presently lives with Beauty who resides in Warren, Michigan. TM’s immediate family remains living in Bangladesh.

TM traveled by planes, buses, and taxis from Bangladesh to the United States border which he crossed by climbing a wall. TM turned himself in to authorities who placed him in Chicago, Illinois, where Heart Alliance, an organization that, among other things, provides assistance to undocumented immigrants, gave TM assistance. Heart Alliance assisted Beauty to sponsor TM and she took him to reside with her in Warren. On January 14, 2019, Sahara executed a document in Bangladesh that granted Beauty special power of attorney to care for TM as his guardian. On March 15, 2019, Sahara waived notice of hearing and consented to petitions for guardianship and for SIJ status for TM.

Beauty petitioned on April 10, 2019, for the probate court to appoint her TM's guardian and petitioned the probate court to make the predicate factual findings necessary to enable TM to apply for SIJ status with the United States Citizenship and Immigration Services (USCIS), a division of the United States Department of Homeland Security, pursuant to 8 USC 1101(a)(27)(J).

The probate court conducted an evidentiary hearing on Beauty's petitions on August 21, 2019. The probate court first granted the petition for the appointment of Beauty as TM's guardian. The probate court next considered Beauty's petition seeking factual findings for TM's application for SIJ status, and in that regard heard TM's testimony. TM explained that he lived with Beauty for six months and that she provided for his every need and made him feel safe. TM testified that he did not desire to return to Bangladesh because he would not have the opportunity to study there for lack of the financial capability. He opined that the Bangladeshi schools were not good. He stated that his mother lacked the financial ability to help pay for his schooling and no one could take care of him or bear the expense of his care.

The probate court asked TM to explain how he traveled from Bangladesh to the United States. TM testified that he lived with his mother and she arranged for a middleman to assist him to fly on planes to different countries and take buses and taxis. He could not recall the number of planes or buses on which he traveled but indicated that they had been many. He testified that he did not know the person who arranged his travel and that he had no personal contact with him except by phone. TM testified that he did not know who paid for his plane and bus tickets but indicated that persons helped him travel from one place to another and all tickets were provided to him. TM admitted that he and his mother planned and intended for him to travel to Beauty's home.

TM testified that his mother had not been abusive to him. He stated that his relationship with his mother had been "so so." He affirmed, however, statements in the petition that he and his family always had a good relationship.

Based on TM's testimony, the probate court denied the petition. It stated that it did not find that TM suffered abuse, neglect, or abandonment, but just the opposite. The probate court found that Sahara prearranged TM's trip to the United States and that both TM and Sahara knew that he would journey to Beauty's home. The probate court opined that the great expenses associated with TM's travels were all covered which contradicted the allegations in the petition that he lived in impoverished conditions. The probate court concluded that TM's mother purposefully arranged and paid for TM to come to the United States. Further, based on TM's testimony, the probate court found that Sahara did not abuse, neglect, or abandon him.

Beauty argued that TM's father's death constituted a de facto abandonment and SIJ status could be granted on that ground alone. The probate court rejected that argument because TM's testimony established that he could be reunited with his mother in Bangladesh who had not abused, neglected, or abandoned him. Accordingly, it denied the petition.

II. STANDARD OF REVIEW

We review for an abuse of discretion a probate court's dispositional rulings and review for clear error the factual findings underlying its decision. *In re Portus*, 325 Mich App 374, 381; 926 NW2d 33 (2018). A probate court abuses its discretion if it chooses an outcome outside the range

of reasonable and principled outcomes. *Id.* “The probate court necessarily abuses its discretion when it makes an error of law.” *Id.* (quotation marks and citations omitted). “A probate court’s finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding.” *Id.* (quotation marks and citation omitted). “We review de novo matters of statutory interpretation.” *Id.* (citation omitted). “This standard of review also applies to the interpretation of federal statutes.” *In re LFOC*, 319 Mich App 476, 480; 901 NW2d 906 (2017) (citation omitted). This Court defers to the probate court on matters of credibility and gives broad deference to findings of fact made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily ascertainable to the reviewing court. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993); see also MCR 2.613(C).

III. ANALYSIS

“The Immigration and Nationality Act of 1990 (Act) first established SIJ status as a path for resident immigrant children to achieve permanent residency in the United States.” *In re LFOC*, 319 Mich App at 481 (quotation marks and citations omitted). Under 8 USC 1101(a)(27)(J), a “special immigrant” includes:

an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court¹ located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

¹ “Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 CFR 204.11(a).

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

8 CFR 204.11(c) provides:

An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

- (1) Is under twenty-one years of age;
- (2) Is unmarried;
- (3) Has 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;
- (4) Has been deemed eligible by the juvenile court for long-term foster care;²
- (5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and
- (6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or
- (7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for

² As explained in 8 CFR 204.11(a):

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in [a] guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

In *In re LFOC*, 319 Mich App at 486 (quotation marks and citation omitted, alteration in original), this Court explained that “[t]he process for obtaining SIJ status is a unique hybrid procedure that directs the collaboration of state and federal systems.” The “federal statute implements a two-step process in which a state court makes predicate factual findings” and the “juvenile then presents the family court’s factual findings to USCIS, which engages in a much broader inquiry than state courts, and makes the ultimate decision as to whether or not the juvenile’s application for SIJ status should be granted.” *Id.* (quotation marks and citation omitted). “The ultimate determination whether to grant SIJ status to a juvenile rests squarely with the federal government.” *Id.* (quotation marks and citation omitted). State courts “make initial factual findings because of their special expertise in making determinations as to abuse and neglect issues, evaluating the best interest factors, and ensuring safe and appropriate custodial arrangements.” *Id.* (quotation marks and citation omitted). “If the application is granted, the juvenile may become a lawful permanent resident who, after five years, is eligible to become a United States citizen. Denial of SIJ status renders the applicant subject to deportation.” *Id.* at 485 (quotation marks and citation omitted.)

The plain language of the federal statute and the regulations promulgated under the statute indicate that state courts make predicate findings of fact whether the juvenile suffered from abuse, neglect, or abandonment by one or more of the juvenile’s parents such that reunification with one or both parents is not viable. If such exists, state courts make findings whether it serves the juvenile’s best interests to return the juvenile to the juvenile’s or his parents’ country of nationality. The record reflects that the probate court understood and applied the law as required.

In this case, Beauty sought appointment of a guardian for TM under MCL 700.5201 *et seq.*, of the Estates and Protected Individuals Code, MCL 700.1101 *et seq.* This code does not define the terms abuse, neglect, or abandonment, nor does the Immigration and Nationality Act of 1990 or the regulations promulgated under it do so. Michigan law, however, statutorily defines the terms abuse, neglect, and abandonment as used in various Acts. Therefore, we look to Michigan law for guidance. As used in the Child Abuse and Neglect Prevention Act, MCL 722.601 *et seq.*, MCL 722.602(1)(b) provides:

“Child abuse” means harm or threatened harm to a child’s health or welfare by a person responsible for the child’s health or welfare, which harm occurs or is threatened through nonaccidental physical or mental injury; sexual abuse, which includes a violation of section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

As used in MCL 722.622(g) of Michigan’s Child Protection Law, MCL 722.621 *et seq.*, “child abuse” is defined as:

harm or threatened harm to a child’s health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child’s health or welfare or by a teacher, a teacher’s aide, or a member of the clergy.

Under the Child Abuse and Neglect Prevention Act, MCL 722.602(d)³ provides:

“Neglect” means harm to a child’s health or welfare by a person responsible for the child’s health or welfare that occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

Under MCL 722.622(k) of Michigan’s Child Protection Law, “child neglect” is defined as:

harm or threatened harm to a child’s health or welfare by a parent, legal guardian, or any other person responsible for the child’s health or welfare that occurs through either of the following:

(i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or by the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

(ii) Placing a child at an unreasonable risk to the child’s health or welfare by failure of the parent, legal guardian, or other person responsible for the child’s health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

Under Michigan’s Uniform Child-Custody Jurisdiction and Enforcement Act, MCL 722.1101 *et seq.*, MCL 722.1102(a) defines the term “abandoned” as used in this Act as “left without provision for reasonable and necessary care or supervision.”

In this case, the evidence established that TM is an unmarried 17-year-old who had not suffered abuse, neglect, or abandonment by his mother. TM testified that his mother never abused him. He offered no testimony that she or his family in Bangladesh neglected him. Nothing in the record supports a finding of abuse or neglect under Michigan law. The probate court, therefore, did not clearly err by finding that claims of abuse or neglect lacked evidentiary support.

After his father died, TM’s mother purposefully arranged for TM to travel to the United States to live with Beauty, a relative. TM’s mother provided for his passage to the United States. The record does not clarify why the arrangements involved TM’s illegal entry into the country, but the record reflects that she had a third person coordinate the means by which TM safely arrived at the United States border where he entered illegally, turned himself in to authorities, traveled or was transported to Chicago, where with the assistance of Heart Alliance, TM obtained placement into the care and custody of his relative as originally planned.

³ Michigan’s Probate Code of 1939, MCL 712A.2(b)(1)(B), incorporates the definition of neglect as used in MCL 722.602.

TM's testimony established that he and his mother purposefully intended for him to travel and live with Beauty. TM did not flee his mother's home or country of origin. When asked by the probate court to describe in detail his travels, TM's testimony revealed that a third person coordinated every step of his passage. TM's mother did not abandon him to his own devices. Rather, she appears to have ensured TM would reach his planned destination. TM indicated vaguely in his testimony that persons met him along the way and provided him his needed tickets for air and ground transportation and facilitated his safe passage. TM did not testify that his travels included any risks of harm, deprivation of any sort, or that his safety during passage was ever in jeopardy. The record evidence does not support a finding that TM's mother abandoned him. Rather, she provided for his care and transport to Beauty. The probate court, therefore, did not clearly err by finding that any claim of abandonment lacked evidentiary support.

Beauty argues that the fact that TM's mother sent him on his voyage to the United States constituted neglect and abandonment because of his age. Beauty asks that this Court take judicial notice that South American countries are unsafe for travelers and that TM survived alone going from one country to another by planes, trains, and taxis. We disagree because the evidence presented to the probate court does not support a finding of neglect or abandonment. No evidence establishes that TM traveled for an extended period, passed in and out of any of the South American countries about which we are asked to take judicial notice, or suffered any risk of harm during his travels. The record reflects that TM's travels were prepaid, prearranged, and carried out as planned. The evidence does not support finding either neglect or abandonment as defined under Michigan law.

When asked why he desired to remain in the United States, TM testified that he wanted to enjoy the benefits of further education and to live with Beauty who provided for his needs. The fact that he desired to stay in the United States because his educational options here are better than in Bangladesh does not support a finding that he suffered abuse, neglect, or abandonment.

Although TM claimed that his mother could not provide for him financially and the petition represented that he lived in impoverished conditions, the record indicates that his mother had the ability to secure his international travel. The evidence contradicted the claim of a life of poverty. The evidence did not support a finding that he suffered abuse, neglect, or abandonment in this regard. The probate court, therefore, did not clearly err by finding that his claim of poverty lacked evidentiary support.

Although the petition represented that life in Bangladesh posed risks, the petition did not indicate that TM suffered personal harm or danger there, nor did TM testify at the evidentiary hearing that anyone's conduct placed him personally at risk of harm or abuse. The record evidence also does not establish that TM could not reunify with his mother or that anything in the family home precluded reunification.

Based on TM's testimony, the probate court did not clearly err by finding that TM did not suffer abuse, neglect, or abandonment by his mother. The record evidence supported the probate court's conclusion that reunification with his mother in Bangladesh remained a viable option. The record does not indicate that TM suffered from a lack of love or affection from his mother or had been deprived of food, clothing, or medical care while living at home with her in Bangladesh. The record does not reflect that TM's home with his mother lacked stability or permanence. TM's

testimony established that he had a good relationship with his family including his mother. No evidence established that domestic violence was directed at TM or that he witnessed such conduct when in the care and custody of his mother in his home in Bangladesh.

Analysis of the record in this case does not indicate that the probate court overstepped its role in the two-tiered SIJ status process. The probate court did not endeavor to make an immigration decision but focused on determining whether evidence supported making predicate factual findings that TM suffered abuse, neglect, or abandonment. The record before the probate court did not warrant making predicate factual findings as requested in the petition. Therefore, the probate court did not abuse its discretion by denying the petition.⁴

Affirmed.

/s/ David H. Sawyer

/s/ Anica Letica

/s/ James Robert Redford

⁴ We acknowledge that at the time we issue our decision, our nation and the world are experiencing the COVID-19 pandemic. Thousands have died and hundreds of thousands have been infected by the virus. During March 2020, the United States Department of State issued a Level 4 travel restriction notice and many nations have closed their borders to international travel. This Court has proceeded without oral argument as permitted under MCR 7.214(E)(1)(b) in the April 2020 case call. All of this being the case and the tragic human consequences of this unprecedented global health crisis does not in any way change the law that this Court must apply in fulfilling our duties. In this case, the probate court did not abuse its discretion. The probate court applied the controlling law to the case and reached the result which we have affirmed for the reasons set forth above. This decision does not in any way affect any other rights TM may have, nor does our ruling prohibit TM from seeking any other remedies that may be available today that were either not pursued nor available to him at the time the probate court adjudicated this case, and nothing in our decision should be construed to hold otherwise.