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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re H.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

H.M.,

Defendant and Appellant.

A142510

(Contra Costa County
Super. Ct. No. J1201675)

H.M. has appealed a post-dispositional order denying his motion for factual findings necessary for him to qualify for special immigrant (SIJ) status under federal law (hereafter the SIJ motion). (8 U.S.C. § 1101(a)(27)(J) [hereafter the SIJ statute].) In their respondent’s brief, the People concede that the trial court erred in refusing to make factual findings requested in the SIJ motion. In light of that concession, H.M. has filed an “Unopposed Motion for Summary Reversal and Expedited Consideration.” We vacate the order on the SIJ motion.

DISCUSSION

H.M. was adjudged a ward for commission of a burglary, and according to his motion is currently on probation. He is 20 years old and will turn 21 on November 15, 2015.

The issue before us was recently addressed in *In re Israel O.* (A142080, Jan. 16, 2015) __ Cal.App.4th __ [2015 Cal.App. Lexis 39] (*Israel O.*). The SIJ statute provides an opportunity for youths who have suffered parental abuse or neglect and are under the jurisdiction of a juvenile court “to pursue regularization of [their] immigration status in the United States.” (*Israel O., supra*, __ Cal.App.4th __ [2015 Cal.App. Lexis 39, p. 2].) The SIJ statute calls upon the juvenile court to make three findings: “(1) the minor is ‘dependent’ upon a juvenile court or ‘committed to, or placed under the custody of,’ a state entity or other court-appointed individual or entity; (2) the minor cannot be reunified with one or both parents ‘due to abuse, neglect, abandonment or a similar basis found under State law’; and (3) it is not in the minor’s ‘best interest’ to be ‘returned’ to his or her country of origin.” (*Israel O., supra*, __ Cal.App.4th __ [2015 Cal.App. Lexis 39, p. 5].)¹ Those findings “are a prerequisite for filing an SIJ status application with the . . . Department of Homeland Security.” (*Israel O., supra*, __ Cal.App.4th __ [2015 Cal.App. Lexis 39, p. 1.] “ ‘SIJ status allows a juvenile immigrant to remain in the United States and seek lawful permanent resident status if federal authorities conclude that [certain] statutory conditions are met.’ [Citation.] A minor who obtains SIJ status may apply after five years to become a naturalized citizen. [Citation.]” (*In re Leslie H., supra*, 224 Cal.App.4th at p. 344.)

“A superior court with jurisdiction to make child custody determinations under California law ‘has the authority and duty to make [SIJ status] findings’ if the evidence before it supports those findings.” (*Israel O., supra*, __ Cal.App.4th __ [2015 Cal.App. Lexis 39, pp. 5–6.]) The evidence here showed that H.M. may have been abused and neglected by his father, but not by his mother. The trial court declined to make the requested findings because it interpreted the second prong of the SIJ statute to require evidence that reunification with *both* parents was not viable. As explained in *Israel O.*

¹ Federal regulations also require findings that the youth is under age 21 and unmarried. (8 C.F.R. § 204.11(c); but see *In re Leslie H.* (2014) 224 Cal.App.4th 340, 348-349 [the regulations have not kept pace with amendments to the SIJ statute and are no longer valid to the extent they conflict with the current statute].)

and as acknowledged in the People’s brief, this interpretation of the statute was mistaken and contrary to that of the federal agencies administering the SIJ statute. (*Israel O., supra*, ___ Cal.App.4th ___ [2015 Cal.App. Lexis 39, pp. 17–20.) Inability to reunify with *one* parent satisfies the second prong of the statute. (*Ibid.*) Accordingly, the court erred when it declined to make the requested findings by concluding otherwise.

The trial court found that the evidence presented by H.M. and his mother in support of the motion for SIJ findings was not credible. We express no opinion on what the SIJ findings should be, and hold only that the court is obliged to make them, if H.M. is still under its jurisdiction.

DISPOSITION

We vacate the juvenile court’s order denying the request for SIJ status findings and remand for a hearing as soon as practicable to determine the issues involved in those findings. If the juvenile court finds in favor of H.M. on the issues presented, the court is directed to record those findings on Judicial Council form JV-224.

Siggins, J.

We concur:

McGuinness, P.J.

Pollak, J.