



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18488075

DATE: JUL. 18, 2022

Appeal of National Benefits Center 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) and the Petitioner appealed that decision to the Administrative Appeals Office (AAO). 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, the Petitioner has established his eligibility and the appeal will be sustained.

I. LAW

To establish eligibility for SIJ classification, petitioners 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). Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual or entity appointed by the state or the juvenile court. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1). The record must also contain a judicial or administrative determination that it is not in the petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. 8 C.F.R. § 204.11(b)(5). Petitioners bear the burden

of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2017, when the Petitioner was 19 years old, the New York Family Court for [] (Family Court) appointed guardianship of the Petitioner to L-M-V-H-,¹ finding that such appointment “shall last until the [Petitioner’s] 21st birthday.” On the same day, the Family Court issued a separate order titled *ORDER-SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that pursuant to sections 661 and 1012 of the Family Court Act, the Petitioner was “dependent upon the Family Court.” The Family Court further found that pursuant to section 384(b) of the New York Social Services Law, the Petitioner’s reunification with his father was not viable due to a basis similar to abuse, abandonment or neglect, in New York state law, and that it was not in his best interest to be removed from the United States and returned to El Salvador, his country of nationality.

Based on the Family Court orders, the Petitioner filed this SIJ petition in January 2018. Prior to issuing a decision, the Director issued a notice of intent to deny (NOID) stating that the SIJ order did not demonstrate the Family Court acted as a juvenile court, had a qualifying parental reunification determination, had a qualifying best interest determination, and USCIS’ consent was not warranted. The Petitioner responded timely and submitted a brief and an amended SIJ order. In September 2018, the Director denied the SIJ petition because the SIJ orders lacked a qualifying parental reunification finding and, consequently, USCIS’ consent was not warranted. 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 in New York when the Family Court orders were issued.

On appeal, the Petitioner submits a brief, a copy of New York case law, and copies of various *R.F.M. v. Nielsen* documents.

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. *Id.* 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, like the Petitioner in this case, whose SIJ

¹ We use initials to protect the privacy of individuals.

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).

Here, the record establishes that the Petitioner is a member of the *R.F.M. v. Nielsen* class. In accordance with the district court’s orders in that case, the Family Court was acting as a juvenile court when it appointed a guardian for the Petitioner and declared him dependent on the Family Court, and the order therefore contains a qualifying parental reunification finding.

C. USCIS’ Consent is Warranted

To warrant USCIS’ consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* An example of court-recognized remedial relief includes the recognition of a petitioner’s placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish that a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS’ may withhold consent. *Id.*

The Director found that the Petitioner did not warrant USCIS’ consent because he had “not demonstrated that the family court orders were sought primarily to obtain relief from parental abuse, neglect, abandonment or similar basis under New York law” and had not therefore “demonstrated that his request for SIJ classification is bona fide.” However, the Petitioner was granted relief in the form of a court-ordered guardianship finding under New York law and declared him dependent on the Family Court, satisfying the requirements of 8 C.F.R. § 204.11(d)(5)(ii). Additionally, the SIJ order provides a sufficient factual basis on which to base our consent. Finally, the Petitioner submitted copies of the documents submitted to the Court, including the underlying petition and affidavits from the Petitioner, his guardian, and his counsel, which also provide facts that support the Court’s best interest determination. The SIJ order and the underlying documents in the record establish a reasonable factual basis for the court’s determinations. The Petitioner has shown that a primary reason he sought the SIJ orders was to obtain relief from his father’s neglect and abandonment, and not primarily to obtain an immigration benefit. Accordingly, USCIS’ consent to the Petitioner’s SIJ classification is warranted, and we withdraw the Director’s decision to the contrary.

III. CONCLUSION

The Petitioner has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification. The Director's decision is withdrawn, and the appeal is sustained.

ORDER: The appeal is sustained.