



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

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

In Re: 18169130

Date: JUL. 27, 2022

Appeal of Long Island, New York Field Office 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 Long Island, New York Field Office denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). The matter is now before us on appeal. On appeal, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification. 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 of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner in the custody of a state agency or an individual or entity appointed by the state or 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 petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when a 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. 8 C.F.R. § 204.11(b)(5). USCIS may 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. *Id.* The petitioner bears 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 Factual and Procedural History

On [redacted] 2015, when the Petitioner, a native and citizen of India, was 20 years old, the New York Family Court for [redacted] (Family Court) appointed guardianship of the Petitioner to K-M-.<sup>1</sup> The same day, the Family Court separately issued an *Order for Special Juvenile Status* (SIJ order) in which it entered findings relevant to the Petitioner's eligibility for SIJ classification.

The SIJ order provides, in pertinent part, that "after examining the motion papers and supporting affidavits, all the pleadings and prior proceedings in this matter, and/or upon hearing testimony, finds in accordance with 8 U.S.C. § 1101(a)(27)(J) that" the Petitioner "is dependent upon the Family Court or has been committed to, or placed in, the custody of a state agency or department, or an individual or entity appointed by the state or Family Court" and that "[r]eunification with one or both of [the Petitioner's] parents is not viable due to" abuse, neglect, and abandonment because the Petitioner "was subjected to physical abuse by his father resulting in injuries. [The Petitioner] was forced to labor full time from age 14 and his wages were confiscated by his father. Mother was unable to protect him. Parents have had no contact and have not supported [the Petitioner] since age 15 or 16." The SIJ order further provides that it "is not in [the Petitioner's] best interest to be removed from the United States and returned to India, which is [the Petitioner's] country of nationality and the country of last habitual residence of [the Petitioner] or of his birth parents." The Petitioner filed his SIJ petition in December 2015 based on this order.

The Director denied the SIJ petition, concluding that the record as a whole, including the evidence submitted with the initial SIJ petition and in response to two Notices of Intent to Deny (NOID), did not establish that the Petitioner warrants USCIS consent. Specifically, the Director determined that the Petitioner did not submit sufficient evidence to demonstrate that the Family Court's parental reunification determination was issued in accordance with relevant New York state law and the record lacked a reasonable factual basis for the Family Court's best interest determination. On appeal, the Petitioner submits a brief and no additional evidence.<sup>2</sup>

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<sup>1</sup> Initials are used to protect the individual's identity.

<sup>2</sup> While we acknowledge the Petitioner's argument on appeal that the Director's decision denying the SIJ petition was not sent to the Petitioner, the record reflects the decision was sent to the address of record and the Petitioner has not submitted any evidence that the decision was not received or sent to an incorrect address. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

## 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. *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 377-80 (S.D.N.Y. 2019). The district court held that USCIS erroneously required that the New York Family Court have authority to order 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, whose SIJ orders were "issued by the New York family court between the petitioners' 18th and 21st birthdays" and whose SIJ petitions were denied, or USCIS intended to deny, on the ground that the Family Court "lacks the jurisdiction and authority to enter [SIJ related 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).

The Director's 2019 NOID indicated one of the reasons USCIS intended to deny the SIJ petition was that the Family Court lacked jurisdiction under New York law to make determinations about the Petitioner's custody as a juvenile because he was over 18 years old at the time of the SIJ order. However, the Director did not include this ground as one of the reasons for denying the petition. We acknowledge that the Petitioner is a class member and in accordance with the district court's orders in *R.F.M. v. Nielsen*, the guardianship and SIJ orders establish that 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. Nonetheless, and as discussed below, the Petitioner has not established his eligibility for SIJ classification.

## C. No Qualifying Parental Reunification Determination

To be eligible for SIJ classification, the Act requires a juvenile court determination that a petitioner's reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law, the record must contain evidence that the juvenile court made a determination based on relevant state law. *See id.*; *see also* 6 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policy-manual> (indicating, as guidance, that the SIJ order should use language establishing that the specific judicial determinations were made under state law.)

On appeal, the Petitioner asserts that the Director determined he did not meet his burden of proof with respect to the issue of reunification due to inconsistencies in the record. However, in the decision denying the SIJ petition, the Director does not refer to any inconsistencies and instead concludes that the Petitioner did not provide evidence of a qualifying parental reunification determination. The Petitioner also contends that the record demonstrates the Family Court made a judicial determination regarding the non-viability of parental reunification and indicated his parents abandoned and neglected him under New York state law.

Upon review, the record supports the Director's determination that the submitted evidence does not include a qualifying parental reunification determination and the Petitioner has not provided any new evidence on appeal to overcome this deficiency. The submitted SIJ order did not specify a New York state child welfare law in determining that the Petitioner could not reunify with one or both of his parents. Instead, it specifies that the Family Court's determinations were made "in accordance with" only federal immigration law. Though the record contains the Petitioner's personal affidavit submitted to the Family Court, the submitted evidence does not include the underlying petition or motion for the SIJ order, hearing transcript, related memorandum of law, or any other relevant evidence demonstrating that the Family Court determined the Petitioner could not be reunified with one or both of his parents due to abuse, neglect, abandonment, and/or a similar basis under New York law. Accordingly, the Petitioner has not met his burden in establishing by a preponderance of the evidence that the Family Court determined that parental reunification was not viable due to abuse, neglect, abandonment, and/or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires.

### III. CONCLUSION

SIJ classification may only be granted upon the consent of the DHS, through USCIS, when a petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. Here, the Petitioner has not submitted evidence to establish the state law basis underlying the Family Court's parental reunification determination, as section 101(a)(27)(J)(i) of the Act requires. Therefore, the Petitioner has not met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification.<sup>3</sup>

**ORDER:** The appeal is dismissed.

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<sup>3</sup> Since the identified basis for denial is dispositive of this matter, we decline to reach and hereby reserve the Director's remaining grounds for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).