



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

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

In Re: 17947682

Date: OCT. 4, 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 New York District Office denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and an appeal was dismissed by this office. Subsequent to the appeal dismissal, 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) and the Petitioner submitted a motion to reopen. Pursuant to that judgment, the Director of the National Benefits Center reopened the Petitioner's SIJ petition and subsequently denied it. The matter is again before us on appeal. Upon *de novo* review, we will sustain the appeal.

**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) of the Act; 8 C.F.R. § 204.11(b).<sup>1</sup> 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. 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).

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

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<sup>1</sup> The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

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). 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).

## I. ANALYSIS

### A. Relevant Evidence and Procedural History

In 2015, when the Petitioner, a native and citizen of India, was 20 years old, the [ ] New York Family Court issued an *Order-Special Immigrant Juvenile Status* (SIJ Status Order) which states, in pertinent part:

This Court, after examining the motion papers and supporting affidavits, all the pleadings and prior proceedings in this matter, and/or hearing testimony, finds, in accordance with 8 U.S.C. § 1101(a)(27)(J), that:

1. The above-named child is under 21 years of age.
2. The above-named child is unmarried.
3. The above-named child 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. (*Final Order of Guardianship was issued* [ ]/15 *to expire* [ ]/15)
4. Reunification with one or both of his parents is not viable due to: the years of abuse and neglect against the subject child committed by the father including physical abuse and physical injury.
5. It is not in the child's best interest to be removed from the United States and returned to India his country of nationality or country of last habitual residence of the child or of his birth parent or parents.

*SIJ Status Order* [ ] 2015) (parenthetical in original, emphasis added).

On the same date, the family court issued a separate, but related *Order Appointing Guardian of the Person*. The order appointed the Petitioner's sister as his guardian for six days, and further ordered that "unless terminated by the Court, the appointment shall last until the subject's 21<sup>st</sup> birthday, since the subject is over 18 and has consented to the appointment until he/she reaches the age of 21. This order shall expire on [ ] 2015 . . . ."

The Director denied the petition, concluding that consent to SIJ classification was not warranted because the record lacked a reasonable factual basis for the court's parental reunification and best interest determinations.

On appeal, we determined that the Petitioner was ineligible for SIJ classification because the family court orders were not issued by a juvenile court, and therefore did not contain the requisite rulings on juvenile dependency or child custody, parental reunification, and best interest. Also, the Petitioner had not shown that the family court made a determination that he could not be reunified with his father under New York child welfare law. Because the Petitioner was ineligible on these grounds and had not established that his request for SIJ classification was *bona fide*, USCIS' consent to his SIJ classification was deemed to not be warranted. The appeal was dismissed accordingly.

Subsequent to the appeal dismissal, 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) and the Petitioner submitted a motion to reopen, contending that he was a class member and asserting that he merited approval of his SIJ petition.<sup>2</sup> In accordance with the district court's orders in that case, it was determined 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.

On motion to reopen, the Director determined the Petitioner had not established that his "petition for SIJ classification is bona fide and that USCIS consent is warranted." The SIJ petition was again denied. The matter is now before us on appeal.

## B. Consent is Warranted

As discussed above, we noted in our decision to dismiss the appeal that the Petitioner had not demonstrated that his request for SIJ classification was bona fide and merited USCIS' consent; the preponderance of the evidence did not establish that the guardianship and SIJ status orders were sought

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<sup>2</sup> 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 350, 377-80 (S.D.N.Y. 2019). Because the plain language of the Act requires either a dependency declaration or a custodial placement and the New York Family Court guardianship orders rendered the plaintiffs dependent upon the family court, the district court held that USCIS exceeded its statutory authority in requiring New York Family Courts to nonetheless have jurisdiction over a juvenile's custody in order to qualify as juvenile courts under the SIJ provisions of section 101(a)(27)(J) of the Act. *Id.* The district court also found that guardianships issued under FCA section 661 were judicial determinations about the custody and care of juveniles, pursuant to the definition of juvenile court at 8 C.F.R. § 204.11(a). *Id.* at 378. The district court 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 orders were "issued by the New York family court between the petitioners' 18<sup>th</sup> and 21<sup>st</sup> 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 18<sup>th</sup> and 21<sup>st</sup> birthdays." *R.F.M. v. Nielsen*, Amended Order, No. 18 Civ. 5068 (S.D.N.Y. May 31, 2019).

in the context of child welfare, child custody or other proceedings seeking relief from parental abuse, neglect, abandonment, or a similar basis to those grounds. We noted that the guardianship hearing was conducted just six days prior to the Petitioner's twenty-first birthday and the Petitioner's attorney repeatedly referred to him as an "adult" during the court proceedings.

With the instant appeal, the Petitioner maintains that despite being referred to as an "adult" by his attorney in some instances during the Family Court hearing, the Family Court Judge and attorneys also referred to the Petitioner as "child," the Family Court Judge appointed the Petitioner's sister to be his guardian, and the SIJ Status Order referenced the Petitioner as a "child" and "minor." Further, the Petitioner argues that there is nothing in the law that authorizes USCIS to consider how close the Petitioner was to reaching his twenty-first birthday in deciding on whether to grant SIJ status.

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). To warrant USCIS' consent, juveniles must establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought "primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect"). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS' consent is warranted. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ findings). Furthermore, 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. 8 C.F.R. § 204.11(b)(5).

We find that USCIS' consent is warranted because the Petitioner has established 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. The Petitioner was granted relief in the form of a court-ordered guardianship finding under New York law and declaring him dependent on the Family Court, satisfying the requirements of 8 C.F.R. § 204.11(d)(5)(ii). Additionally, the SIJ orders provide a sufficient factual basis on which to base our consent; the amended *SIJ Status Order* clearly details that the Petitioner was abused and neglected by his father, including two years of physical abuse that led to the Petitioner suffering physical injury. Finally, the Petitioner submitted copies of the documents submitted to the Court, which also provide facts that supported 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.

**ORDER:** The appeal is sustained.