



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

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

In Re: 18599694

Date: SEP. 28, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not meet his burden of proof to establish that he is eligible for SIJ status. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and reasserts his eligibility. 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, 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).¹ 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.

¹ 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).

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 Evidence and Procedural History

In [REDACTED] 2016, when the Petitioner was 18 years old, the Family Court of the State of New York, [REDACTED] (Family Court) issued an order appointing S-S-² as the Petitioner’s guardian in guardianship proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate’s Court Procedure Act. In a separate order issued in [REDACTED] 2016, titled *ORDER-Special Immigrant Juvenile Status* (SIJ order), the Family Court made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court determined that the Petitioner’s reunification with one or both of his parents was not viable due to neglect under New York law and that it was not in his best interest to be returned to India, his country of nationality.

Based on the Family Court orders, the Petitioner filed this SIJ petition in October 2016. While the SIJ petition was pending, the Director issued two individual requests for evidence (RFE), requesting (1) evidence of the factual basis for the reunification and best interest findings in the SIJ order of the Family Court; and (2) evidence to establish the Petitioner’s true date of birth, as the record indicated that the Petitioner used multiple dates of birth in the past. In his responses to the RFEs, the Petitioner submitted a letter from counsel indicating that the Family Court was closed due to the COVID-19 pandemic and requesting an additional 90 days to submit the documents from Family Court, his original birth certificate, a copy of his high school identification card showing his date of birth, and a copy of his examination certificate from the [REDACTED] School Education Board showing his date of birth. The Director denied the SIJ petition in March 2021, determining that the letter submitted did not satisfy the underlying request for additional evidence to meet his burden of proof and he did not provide any explanation for the multiple dates of birth he used in the past.

B. S.D.N.Y. Judgment and Applicability to the Petitioner

As a preliminary matter, the Petitioner asserts, on appeal, that he is a member of the *R.F.M. v. Nielsen* class as the Family Court was acting as a juvenile court when it issued the guardianship and SIJ orders in this case.³ See 365 F. Supp. 3d 350 (S.D.N.Y. 2019). In *R.F.M. v. Nielsen*, 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 on the ground

² We use initials to protect the privacy of individuals.

³ Our review indicates the Petitioner also filed a combined motion to reopen and reconsider the Director’s decision on this SIJ petition in May 2021, asserting eligibility as a member of the *R.F.M. v. Nielsen* class, while jurisdiction over the petition and the instant appeal was already with us. In January 2022, the Director denied the combined motions, concluding that the Petitioner had not established that he was an *R.F.M.* class member. As explained above, we find no error in the Director’s decision that the Petitioner has not established he is an *R.F.M.* class member.

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, while the Petitioner’s original SIJ petition contained guardianship and SIJ orders issued by the Family Court when the Petitioner was over 18 years old, it was not denied on the ground that the Family Court lacks jurisdiction and authority to enter SFOs. Since the original SIJ petition was correctly denied by the Director on other grounds as outlined below, the Petitioner is not a member of the *R.F.M. v. Nielsen* class. See *R.F.M. v. Nielsen*, Amended Order, No. 18 Civ. 5068.

C. Consent Not Warranted

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). We do not question the Family Court’s purpose in issuing its orders, but here, USCIS’ consent is not warranted because the Petitioner has not established that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under New York law.

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). For USCIS to consent, petitioners must establish that the juvenile court order or supplemental evidence includes the factual bases for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5)(i). 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).

On appeal, the Petitioner states that the Director erroneously denied the SIJ petition because he requested additional time to obtain the court documentation due to the courts’ closures for the COVID-19 pandemic. He states that it was not possible to obtain copies of the requested documents from Family Court at that time. The Petitioner further contends that the Director erred in finding that the record did not provide a reasonable factual basis for the court’s SIJ related findings. He maintains that the SIJ order “is detailed and specifies that [he] was severely abused and neglected by his parents,” that it relied on his testimony before the court regarding “incidents of abuse and physical beating” by his parents and their “fail[ure] to support [him] under New York law;” and that it indicated that his parents abandoned and neglected him as they “fully abdicated their parental responsibility . . . and have not provided any assistance for his care since 2010.” He further states that the juvenile court relied upon “motion papers and supporting affidavits, all the pleadings and prior proceedings in this matter, and/or hearing testimony,” in finding that he had been neglected and abandoned by his parents.

Here, the Petitioner has not established by a preponderance of the evidence that a primary reason he sought the SIJ order was to gain relief from parental maltreatment such that USCIS consent is warranted. Despite the Petitioner's assertions on appeal that he provided supporting testimony or evidence to the Family Court, he has not submitted any of the referenced evidence to establish the factual basis for the reunification and best interest findings in the SIJ order of the court. The evidence in the record also does not support the Petitioner's statements on appeal that the court issued a detailed order that includes language referencing the abuse, neglect, and abandonment he has suffered at the hands of his parents, as neither the Family Court guardianship order, nor the SIJ order, include any such language. Contrary to the Petitioner's assertions, the SIJ order indicates only that the Petitioner's reunification with "one or both of his[] parents is not viable" due to neglect and that it is not in his best interest to be returned to his or his parents' country of nationality, India. Neither order in this case indicates that the Family Court found the Petitioner to have been abused and abandoned as the Petitioner asserts, and in fact, they do not contain any factual findings by the Family Court on which it relied in making the requisite reunification and best interest determinations. We acknowledge the SIJ order states that the Court "examin[ed] the motion papers and supporting affidavits, all the pleadings and prior proceedings in this matter, and/or hearing testimony" in order to make its findings on reunification and the best interest of the Petitioner. Still, as stated, the Petitioner has not submitted below or on appeal any supporting documentation or evidence the court considered in making its findings, such as copies of the underlying guardianship petition, motion papers, supporting affidavits, pleadings, or testimony transcripts, that reflect the facts on which the Petitioner relied in seeking the reunification and best interest determinations.⁴

Accordingly, the record, including the Family Court orders, do not establish the factual basis for the reunification and best interest findings in the SIJ order of the Family Court. 8 C.F.R. § 204.11(d)(5)(i). The preponderance of the evidence therefore does not 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, such that the record demonstrates that the request for SIJ classification is bona fide. Consequently, the Petitioner has not established that USCIS' consent to a grant of SIJ classification is warranted.⁵

⁴ Additionally, while we acknowledge the Petitioner's explanations that the COVID-19 pandemic resulted in the closure of courts and the inability to obtain the requested documentation, as stated, the Petitioner does not submit the previously requested documentation to establish the factual basis for the Family Court's SIJ related determinations on appeal now that the courts have reopened.

⁵ Further, although not raised by the Director, our *de novo* review also indicates the Family Court orders lack a qualifying determination regarding parental reunification as the record does not establish the parent to whom the Family Court's reunification determination applies. The SIJ order uses language that mirrors the language of Act, stating generally that reunification is not viable with "one of both of his[] parents," which is not sufficient to satisfy the requirements of section 101(a)(27)(J)(i) of the Act. See 6 USCIS Policy Manual J.3(A)(3), <https://www.uscis.gov/policy-manual> (stating that the juvenile court order or supporting evidence should establish the parent(s) to whom the reunification determination applies). Additionally, USCIS records indicate that, in June 2022, the Petitioner was named as the beneficiary of a Form I-130, Petition for Alien Relative, in which A-K-, a U.S. citizen, sought to classify him as her spouse. As such, it appears that the Petitioner is married and therefore is no longer eligible for SIJ classification under section 101(a)(27)(J) of the Act. To be eligible for SIJ classification, a petitioner must show, in part, that they are unmarried. 8 C.F.R. § 204.11(b)(2) (requiring that SIJ petitioners be unmarried at the time of filing and adjudication). In any future filings on his SIJ petition, the Petitioner must address these additional grounds of ineligibility.

III. CONCLUSION

As discussed above, the Petitioner has not demonstrated that USCIS' consent to a grant of SIJ classification is warranted.⁶ Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.

⁶ We note that the Petitioner has not submitted an explanation for the multiple dates of birth he used in the past, as discussed by the Director, and therefore has not established his date of birth and his eligibility. *See* 8 C.F.R. § 204.11(b)(1) (SIJ petitioners must be under 21 years of age at the time of filing). However, as our finding that the Petitioner has not established that he warrants USCIS' consent to a grant of SIJ classification is dispositive of his appeal, we decline to reach and hereby reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 a Petitioner is otherwise ineligible).