



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

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

In Re: 16249621

Date: FEB. 2, 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 Juvenile (SIJ petition), concluding the Petitioner had not submitted a response to the Director's request for evidence. The Director denied three subsequent motions. On appeal, the Petitioner asserts his eligibility for SIJ classification.

We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will remand this matter to the Director for the entry of a new decision.

**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(c). 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).

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 the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019), at 5-6. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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. Procedural History

The record contains two SIJ petition filings for the Petitioner. The Petitioner's first SIJ petition was filed in August 2014. The Director denied this SIJ petition in April 2017, concluding the Petitioner had not submitted a response to the Director's request for evidence. The Petitioner filed a second SIJ petition in September 2014. The Director denied this second SIJ petition in December 2016, as the Petitioner was not under 21 years of age at the time of SIJ petition filing.

The Petitioner filed a motion to reopen from his first SIJ petition filing in May 2017. The Director denied this motion in March 2018, concluding the record did not demonstrate a court that had jurisdiction over the Petitioner as a juvenile issued a SIJ-related order for him as he was 20 years old at the time of order issuance, and USCIS' consent to SIJ classification was further not warranted. In January 2020, the Petitioner filed motions to reopen and reconsider with the Director requesting consideration as a *R.F.M. v. Nielsen* 365 F. Supp. 3d 350 (S.D.N.Y. 2019) class member; the Petitioner's SIJ petition was approved for reopening and reconsideration in February 2020. In April 2020, the Director denied the Petitioner's SIJ petition, concluding the Petitioner's SIJ petition was erroneously reopened and re-adjudicated as the Petitioner did not qualify as an *R.F.M.* class member. Specifically, the Director explained the Petitioner's underlying SIJ petition was denied solely for reasons other than a ground finding the New York Family Court is not a juvenile court having jurisdiction to issue SIJ-related orders for juveniles between 18 and 21 years old (the competent jurisdiction requirement). The Petitioner filed an appeal of this denial in May 2020. In response, the Director reiterated in an August 2020 decision that the Petitioner's SIJ petition cannot be reopened and re-adjudicated as an *R.F.M.* class member because his underlying SIJ petition was denied solely for reasons other than the competent jurisdiction requirement. The Petitioner filed the instant appeal of this decision in September 2020.

### 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. *Id.* at 377-80. 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 New York Family Court Act (FCA) § 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 reunification and return 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 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).

The Petitioner’s second SIJ petition filing, which was denied solely on the basis that he was not under 21 years of age at the time of filing, would not qualify the Petitioner as an *R.F.M.* class member. However, the Petitioner’s first SIJ petition, the matter before us on instant appeal, was denied in March 2018, in part on the basis that the New York family court did not have jurisdiction over the Petitioner as a juvenile because he was 20 years old when the family court issued an SIJ-related order for him.

Accordingly, the record establishes the Petitioner is a member of the *R.F.M. v. Nielsen* class. As such, we will remand the matter to the Director to consider whether the Petitioner has established his eligibility for SIJ classification, including whether a qualifying parental reunification was made for him.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision.