



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

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

In Re: 19074027

Date: JUN. 1, 2022

Motion on Administrative Appeals 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 New York District Office (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed the Petitioner's subsequent appeal and two combined motions to reopen and reconsider. The matter is now before us on a third combined motion to reopen and reconsider based on the District Court for the Southern District of New York's issuance of a judgment in *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019). 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). Upon review, the Petitioner has established that he is a member of the *R.F.M. v. Nielsen* class. However, during adjudication of the Petitioner's third combined motion to reopen and reconsider we issued a notice of intent to dismiss (NOID) based on derogatory information in the record. In response, the Petitioner submits a withdrawal request. Accordingly, we will dismiss the motions to reopen and reconsider based on their withdrawal by the Petitioner.

In our NOID, we notified the Petitioner that the record contains derogatory information that impacts his eligibility for SIJ classification. As we explained, a review of Service records reveals information that is materially inconsistent with the information the Petitioner included in his SIJ petition. Contrary to the Petitioner's claims in his SIJ petition that his parents were killed during armed conflict in the Republic of the Congo in 1998 or 1999 when he was a young child, government records indicate that his parents are currently alive and residing in the United States. Government records show that the Petitioner's father received a B1/B2 visa in February 2018, arrived in the United States in March 2018, and overstayed his visa. As support for his visa application, the Petitioner's father provided a passport issued in Burkina Faso in January 2018. Similarly, the Petitioner's mother received a B1/B2 visa in February 2018, providing a passport issued in Burkina Faso in January 2018, and entered the United States in March 2018. This information directly conflicts with representations the Petitioner made on his SIJ petition which are material to his eligibility for SIJ classification. Specifically, in the addendum to Part. 6, Section A., the Petitioner stated that his parents were killed in 1998 or 1999, which was the sole basis for the court's required determination that his reunification with his parents was not viable. In our NOID, we notified the Petitioner that due to these unresolved inconsistencies, he had not demonstrated by a preponderance of the evidence that he is eligible for SIJ classification under section

101(a)(27)(J) of the Act. Pursuant to 8 C.F.R. § 103.2(b)(16)(i), we gave the Petitioner an opportunity to submit evidence to rebut this derogatory information and resolve or explain the discrepancies in the record.

In response to our NOID, the Petitioner submits a request to withdraw his Form I-290B, Notice of Appeal or Motion. We acknowledge the Petitioner has elected to withdraw his motions to reopen and reconsider in response to our NOID and has declined the opportunity to rebut the derogatory evidence. As the motions are withdrawn, we make no determination on the merits of the case. Instead, we enter these findings to document the facts and circumstances surrounding the withdrawal, as they may be material to future benefit requests. *See* 8 C.F.R. § 103.2(b)(15) (noting the effects of withdrawal). Because there is no appeal from the acknowledgement of a withdrawal, the Petitioner may challenge these findings only in the context of a future benefit request, should the findings be deemed material and adverse to eligibility. *Id.*<sup>1</sup>

**ORDER:** The motion to reopen is dismissed based on its withdrawal by the Petitioner.

**FURTHER ORDER:** The motion to reconsider is dismissed based on its withdrawal by the Petitioner.

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<sup>1</sup> Even if we did not dismiss the Petitioner's motions based on his withdrawal, we would summarily dismiss them as abandoned due to his failure to respond to our NOID, pursuant to 8 C.F.R. § 103.2(b)(13)(i).