



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

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

In Re: 4562116

Date: MAR. 27, 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 petition, concluding the Petitioner did not demonstrate the state court had jurisdiction under state law to make a legal conclusion about returning him to his parent's custody. The Petitioner asserts he has demonstrated his eligibility for SIJ classification. Subsequent to the Director's denial of his SIJ petition, the District Court for the Southern District of New York (district court) issued a judgment in *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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(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. Relevant Facts and Procedural History

In [REDACTED] 2017, when the Petitioner was 20 years old, the New York Family Court for [REDACTED] (Family Court) appointed guardianship of the Petitioner to D-Z-P-<sup>1</sup>. In a separate order, the Family Court issued an *ORDER OF THE COURT*, then an *ORDER-Special Immigrant Juvenile Status* (SIJ order) making determinations related to the Petitioner's SIJ eligibility. The Family Court subsequently issued an *ORDER CLARIFYING AN ORDER* (clarifying order) to provide "the statutory authority under which the 2017 order, attached hereto and made a part hereof, was issued." The Family Court declared the Petitioner dependent upon the Family Court in accordance with New York case law, as it placed him in the guardianship of D-Z-P-. The Family Court determined the Petitioner's reunification with his father is not viable due to abandonment under the "Family Ct Act § 1012; Social Services Law § 384-b(5)," and New York case law because the Petitioner's father has not "contributed to the financial, education, emotional, or developmental needs" of the Petitioner. The clarifying order includes the Petitioner's father's name, E-D-; the Family Court acknowledged his father's name does not appear on the Petitioner's birth certificate. In its guardianship order, the Family Court refers to the Petitioner's biological father as his "legally-established birth father." The Family Court also determined it is not in the Petitioner's best interest to return to Ecuador because there is no one there to care for him and it would be dangerous for him to return.

In March 2017, the Petitioner filed his SIJ petition. The Director denied the SIJ petition, concluding the Petitioner did not demonstrate he was the subject of a juvenile court order in which the court had the authority to determine whether his parents should regain or lose custody of him.

### A. 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. 365 F. Supp. 3d at 377-80. 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, like the Petitioner in this case, 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 [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).

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

Here, the record establishes that the Petitioner is a member of the *R.F.M. v. Nielsen* class. In accordance with the district court's orders in that case, the Family Court properly exercised its jurisdiction when it appointed a guardian for the Petitioner and made the requisite determinations concerning his dependency on the court, non-viability of parental reunification, and best interest.

### III. CONCLUSION

The Petitioner has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification. The Director's decision is withdrawn and the appeal is sustained.

**ORDER:** The appeal is sustained.