



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

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

In Re: 20862153

Date: NOV. 7, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of the Dominican Republic, 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 (SIJ petition). The matter is now before us on appeal. Subsequent to the filing of the appeal, the District Court for the Southern District of New York issued a judgment in *R.F.M v. Nielsen*, 365 F. Supp. 3d 350 (No. 18 Civ. 5068 (S.D.N.Y. April 8, 2019, amended May 31, 2019). Upon *de novo* review and pursuant to the *R.F.M.* judgment, the Petitioner has established her eligibility and the appeal will be sustained.

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). 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. 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 Facts and Procedural History

In 2017, when the Petitioner was 19 years old, the New York Family Court for the [redacted] (Family Court) issued a *Special Findings Order* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was “dependent upon the Family Court, in that the Family Court has taken jurisdiction over the matter of her guardianship case.” The Family Court found that the Petitioner’s reunification with one or both of her parents was not viable due to abandonment and/or a similar basis under New York law” because “her father [wa]s deceased and [could] not provide for her.” The Family Court further found that it was not in the Petitioner’s best interest to be removed from the United States and returned to the Dominican Republic, her country of nationality.

Based on the Family Court orders, the Petitioner filed this SIJ petition in March 2017. The Director issued a notice of intent to deny (NOID), noting that the Petitioner was over 18 years of age when the SIJ order was issued. The Director further noted that there was insufficient evidence to show the factual basis for the Family Court’s best interest findings. As a result, the Director determined that the Petitioner had not established her eligibility for SIJ classification. In response to the NOID, the Petitioner submitted a letter from her counsel. The Director subsequently denied the petition, concluding that the Petitioner was over 18 years of age on the date the SIJ order was issued and that she did not provide additional evidence to show the factual basis for the Family court’s best interest findings.

The Petitioner reasserts her eligibility for SIJ classification on appeal. She argues that the Family Court has jurisdiction to make determinations for the care and custody of children between the ages of 18 and 21, and that USCIS does not have the authority to second guess the Family Court’s jurisdiction and best interest determinations. In support of her contentions, the Petitioner submits an updated personal statement, a letter from the [redacted] Administration for Children’s Services, and several *R.F.M v. Nielsen* documents.

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. 365 F. Supp. 3d at 377-80. 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, 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 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, 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's orders in the Petitioner's case, including its determinations that reunification with her father was not viable due to abandonment or a similar basis under New York law and that it was not in her best interest to return to the Dominican Republic, establish her eligibility for SIJ classification under section 101(a)(27)(J)(i) of the Act.

C. USCIS' Consent is Warranted

To warrant USCIS' consent, petitioners must establish that the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, 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)

Upon *de novo* review, the Petitioner has established that USCIS' consent to her request for SIJ classification is warranted. Contrary to the Director's conclusion, the record below contained a reasonable factual basis for the best interest determination made by the Family Court in the SIJ order. Specifically, the Family Court issued its SIJ order after "examining the motion papers and supporting affidavits, in accordance with the N.Y. Fam. Ct. Act § 1044, and all the pleadings and prior proceedings in this matter, and/or hearing testimony. . ." Upon review of these documents, which stated that the Petitioner's mother was her sole caregiver, the Petitioner had resided in the United States for eleven years and had a support network here, and there was no one in the Dominican Republic to care for her, the Family Court determined that parental reunification was not viable because the Petitioner's father had died and could not provide for her and it would not be in the Petitioner's best interest to be returned to the Dominican Republic.

Based upon the foregoing, the Petitioner has demonstrated, by a preponderance of the evidence that the record below contained the factual basis for the Family Court's best interest determination required to warrant USCIS' consent to her request for SIJ classification. *See* 8 C.F.R. § 204.11(d)(5)(i). The Petitioner therefore has established that USCIS' consent to her request for this classification is warranted, as section 101(a)(27)(J)(i)-(iii) of the Act requires.

ORDER: The appeal is sustained.