



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 19338934

Date: NOV. 21, 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 the Petitioner had not demonstrated that a juvenile court made a qualifying parental reunification determination. The matter is now before us on appeal. On appeal, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification. 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 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(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. 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). 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 Factual and Procedural History

On [REDACTED] 2017, when the Petitioner was 20 years old, the Family Court of [REDACTED] New York (Family Court) issued an order appointing the Petitioner’s mother as his guardian. In a separate order entitled Order-Special Immigrant Juvenile Status (SIJ Order) and pursuant to section 661 of the New York Family Court Act, the Family Court determined, among other determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court. Additionally, the Family Court determined that the Petitioner’s reunification with his father was not viable due to abandonment, and that it would not be in the Petitioner’s best interest to be removed to El Salvador, his country of origin.

Based on the SIJ order, the Petitioner filed his SIJ petition in September 2017. The Director denied the petition, finding that the Family Court was not acting as a juvenile court, which is defined in 8 C.F.R. § 204.11(a) as a court with “jurisdiction under state law to make judicial determinations about the custody and care of juveniles.” The Director concluded that as the Petitioner was 20 years old and had attained the age of majority in New York when the orders were granted, the Family Court did not have jurisdiction under New York law over the Petitioner’s custody as a juvenile and the guardianship issued upon his consent was not equivalent to a qualifying custodial placement.

In October 2022, we issued a notice of intent to dismiss (NOID) advising the Petitioner that although he had overcome the ground for the Director’s denial because the record establishes that he is a member of the *R.F.M. v. Nielsen* class,² he was ineligible for SIJ status because he did not demonstrate that a juvenile court made a qualifying parental reunification determination in his case. In response to the NOID, the Petitioner submitted a nunc pro tunc order dated [REDACTED] 2022, entitled Special Findings of Fact and Rulings of Law (amended SIJ order) and effective retroactively to the date of the original SIJ order. In the amended SIJ order, the Family Court specifies that the Petitioner’s reunification with his father is not viable due to abandonment as defined in section 384-b(4)(b) of the New York Social Services Law and cites to New York child welfare law related to abandonment.

² 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. *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 377-80 (S.D.N.Y. 2019). 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 FCA section 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.

Upon de novo review, the amended SIJ order demonstrates that the Family Court's parental reunification determination was based on a finding of abandonment under relevant New York child welfare laws. Accordingly, the Petitioner has established by a preponderance of the evidence that the Family Court made a qualifying parental reunification determination, as section 101(a)(27)(J)(i) of the Act requires. As the Petitioner has otherwise established that he meets the remaining eligibility criteria and his request for SIJ classification warrants USCIS' consent, he has established eligibility under section 101(a)(27)(J) of the Act.

ORDER: The appeal is sustained.