



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

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

In Re: 20335292

Date: NOV. 22, 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. On appeal, the Petitioner submits new evidence and 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 *de novo* review, we will remand this matter to the Director for further proceedings consistent with this 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)(i) 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; 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

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).

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

In [] 2018, when the Petitioner was 20 years old, the family court in [] New York (family court), issued an *Order Appointing Guardian of the Person* (guardianship order), in which it determined that the Petitioner's best interest would be promoted by the appointment of a guardian, specifically the Petitioner's friend A-M-S.² The guardianship order further stated that the appointment would last until the Petitioner's 21st birthday, as the Petitioner was over 18 at the time the order was issued.

Also in [] 2018, the family court issued an *Order – Special Immigrant Juvenile Status* (SIJ order). In the SIJ order, the family court declared the Petitioner dependent on the court, determined that it had jurisdiction to make judicial determinations about the custody and care of minors which included juveniles up to the age of 21 per the New York Surrogate Procedure Act section 103(27), the New York Family Court Act section 661(a), and that the family court was acting in this capacity in issuing the Petitioner's guardianship order according to those statutes. The SIJ order further found that the Petitioner's reunification with his mother and father was not viable due to neglect, abandonment, and/or a similar basis under New York law. Finally, the SIJ order found that it was not in the Petitioner's best interest to be returned to Egypt, his country of nationality, because he would not be able to pursue his dreams or education there. The SIJ order went on to state that the Petitioner was trying to finish college and was "not capable of doing that in Egypt", nor would he "be capable of a normal life". The Petitioner filed his SIJ petition in November 2018 on this basis. After reviewing the record, the Director concluded that the record did not include a factual basis for the determination that the Petitioner had been neglected and abandoned by his parents, nor did the record demonstrate that the actions of his parents constituted a similar basis to such maltreatment under New York law which defines a child as less than 18 years of age. The Director determined that there is conflicting information in the record and that the Petitioner did not submit documentation establishing that this information was presented to the family court prior to issuing the SIJ order. The Director also stated that the court order did not contain a determination that the Petitioner could not return to Egypt nor did it provide New York law for the basis of the best interest determination. Finally, the Director concluded that the Petitioner had not demonstrated that his request for SIJ classification was bona fide due to inconsistencies in the record regarding his statements on his non-immigrant visa application and within his SIJ claim.

Upon *de novo* review, to the extent that the Director's decision characterized the Petitioner as ineligible for SIJ classification due to his age during the events giving rise to his SIJ claim, we withdraw that determination. As the Petitioner correctly asserts on appeal, the family court had appropriate jurisdiction over him as a juvenile per Section 101(a)(27)(J)(i) of the Act, 8 C.F.R. § 204.11(c)(1), applicable New York Law, and the District Court for the Southern District of New York's judgment in *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019). The court's judgment certified a class

² Initials used to protect the privacy of individuals.

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.” *Id.*

On appeal, the Applicant submits a brief and the transcript of his proceedings before the family court prior to the court’s issuance of his guardianship order and SIJ order. He argues that USCIS’ consent is warranted in his case, as he submitted a family court order with the requisite parental reunification and best interest determinations. The Petitioner additionally asserts that there was a reasonable factual basis for the court’s rulings as the court transcript establishes that his parents abandoned him. Furthermore, he argues that his purported misrepresentation in his non-immigrant visa application is not relevant to the instant proceeding because it was not a misrepresentation before the family court in making the requisite SIJ findings and because the ground of inadmissibility under section 212(a)(6)(C) of the Act is waived for SIJ petitioners.

The new evidence on appeal is material as it directly relates to the Director’s finding that the Petitioner had not established a factual basis for the determination that he had been neglected and abandoned by his parents. As the Director has not had opportunity to review the new document submitted on appeal, we will remand the matter to the Director to consider this evidence in the first instance and determine whether the Petitioner has satisfied the remaining eligibility requirements for SIJ classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.