



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

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

In Re: 03027570

Date: NOV. 28, 2022

Appeal of Long Island, New York Field 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 Long Island Field Office (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is 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*, No. 18 Civ. 5068 (S.D.N.Y. April 8, 2019, amended May 31, 2019).

On appeal, the Petitioner asserts that she has demonstrated her 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)(i) of the Act; 8 C.F.R. § 204.11(b).¹ To establish that they are under 21 years old, SIJ petitioners must submit, as initial evidence, documentary evidence of their age, "in the form of a valid birth certificate, official government-issued identification, or other document that in USCIS' discretion establishes the petitioner's age." 8 C.F.R. § 204.11(d)(2). 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).

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).

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 Evidence and Procedural History

In [] 2015, the New York Family Court for [] (Family Court) appointed guardianship of the Petitioner to her sister, finding that the guardianship appointment of the Petitioner, who was 20 years old, “shall last until [her] 21st birthday. . . .” On the same day, the Family Court issued an *ORDER-Special Immigrant Juvenile Status* (initial 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, 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.” The Family Court further declared that the Petitioner’s reunification with her father was not viable due to abuse and neglect, and that it was not in her best interest to be removed from the United States and returned to Nicaragua, her country of nationality. On May 11, 2015, based upon the Family Court’s orders, the Petitioner filed her SIJ petition.

The Director denied the petition, determining 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 dependency and/or 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 her consent was not equivalent to a qualifying custodial placement. The Director further determined that the record did not contain qualifying determinations regarding parental reunification and her best interest, and that she had not demonstrated that USCIS’ consent to her SIJ classification was warranted. The Petitioner timely appealed the Director’s decision.

On appeal, the Petitioner submits an amended SIJ order (amended SIJ order) issued *nunc pro tunc* to the date of the initial SIJ order. The amended SIJ order states that the Family Court made its findings “after examining the motion papers, supporting affidavits, pleadings and prior proceedings. . . and/or hearing testimony, [and in] accordance with § 661 of Family Court Act [FCA] and § 1701 of Social Services Law [SSL].” The amended SIJ order cites to New York state law on abuse, neglect, and abandonment, as defined in sections 371(4-b)(i) and 384(b)(5) of the SSL and section 1012 of the

FCA, respectively. The amended SIJ order additionally states, in its best interest determination, that “there are no family members [in Nicaragua] who are willing or able to provide [the Petitioner] with a safe home, rendering [her] destitute and homeless,” and cites to New York case law regarding the best interest of the child.

In August 2021, we issued a notice of intent to dismiss (NOID) explaining that in light of discrepancies in the record, the Petitioner had not provided sufficient evidence to satisfy the requirement that she be under 21 years of age at the time of filing. The record indicates that when the Petitioner was apprehended by U.S. immigration authorities in [REDACTED] 2013, she was carrying a Nicaraguan Passport bearing the name [REDACTED] and listing her date of birth as [REDACTED] 1993. Based on this date of birth, the Petitioner would have been 22 years of age when she filed her SIJ petition on May 11, 2015, rendering her ineligible for the benefit. The Petitioner submitted a response to our NOID in October 2021, including copies of her updated Nicaraguan passport and sole birth certificate, both reflecting the date of birth of [REDACTED] 1994. She also submitted a statement from an attorney in Nicaragua, detailing efforts to rectify the birth certificate, and an order from the Nicaraguan Civil Registry that indicates the attached birth certificate is the only one recognized by the Nicaraguan government.

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 350, 377-80 (S.D.N.Y. Mar. 15, 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 the 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 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).

The record before us 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 was acting as a juvenile court when it appointed a guardian for the Petitioner and declared her dependent on the Family Court. As such, we withdraw the Director’s decision to the contrary.

C. Parental Reunification Determination

The Act requires a juvenile court's determination that an SIJ petitioner cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law. 8 C.F.R. § 204.11(c)(1)(ii). The Petitioner bears the burden of proof to establish the state law the juvenile court applied in making this determination.

The Director determined that the Family Court did not make a qualifying parental reunification determination because the SIJ order did not cite to the state law under which the reunification finding was made. On appeal, however, the amended SIJ order cites to New York state law on abuse and neglect under section 371(4-b)(i) of the SSL and section 1012 of the FCA as the basis for the Family Court's determination that the Petitioner's father abused and neglected her and that she could not be reunified with him under New York state law.² Accordingly, the record establishes that the Family Court made a qualifying parental reunification determination. Therefore, we withdraw the Director's decision to the contrary.

D. Best Interest Determination

The Act requires a judicial or administrative determination that it is not in the best interest of the SIJ petitioner to be returned to their (or their parents') country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act. As we have explained in policy guidance, in making its best interest determination, the family court must "make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations." *See 6 USCIS Policy Manual J.2(C)(3)*, <http://www.uscis.gov/policy-manual> (explaining that "[t]he child's safety and well-being are typically the paramount concern" and that "USCIS defers to the juvenile court in making this determination . . ."). *Id.* Here, the Director determined that the record lacked a qualifying best interest determination because language in the record suggested that the Family Court intended to make a decision about the Petitioner's removal rather than whether placement in Nicaragua was in her best interest, and the record failed to indicate that the Family Court considered any other possible custodial placement for her in Nicaragua.

Upon *de novo* review, however, the record establishes that the Family Court made a qualifying best interest determination. The initial SIJ order describes the abuse of the Petitioner by her father, including beating her and throwing her out of the house. In an affidavit before the Family Court, the Petitioner described her mother's mental health issues, noting that she heard her aunts say that her mother was "never quite right" after her birth. The amended SIJ order states that the Petitioner's mother suffered a breakdown and then left her in the care of her abusive father, who abandoned her. The amended SIJ order also states that "there are no family members [in Nicaragua] who are willing or able to provide [the Petitioner] with a safe home, rendering [her] destitute and homeless," and cites to New York case law regarding the factors to consider in determining a child's best interest. The

² The amended SIJ order additionally declares that the Petitioner's reunification with her mother is not viable due to abandonment and neglect and that her reunification with her father is not viable due to abandonment. However, as the Petitioner has otherwise established that the SIJ orders contain a qualifying parental reunification determination, we need not address these additional findings.

record reflects that the Family Court made an “individualized assessment” under New York law that took into account the Petitioner’s “safety and well-being” in determining that it was not in her best interest to return to Nicaragua. *See 6 USCIS Policy Manual J.2(C)(3)*. As such, we withdraw the Director’s decision to the contrary.

E. The Petitioner’s Age at the Time of Filing

An SIJ petitioner must establish that they were under 21 years of age at the time of filing the SIJ petition. Section 101(a)(27)(J) of Act; 8 C.F.R. § 204.11(b)(1). To meet this requirement, petitioners must submit, as initial evidence, documentary evidence of their age, “in the form of a valid birth certificate, official government-issued identification, or other document that in USCIS’ discretion establishes the petitioner’s age.” 8 C.F.R. § 204.11(d)(2).

The record shows that when the Petitioner was apprehended by U.S. immigration authorities in [REDACTED] 2013, she was in possession of a Nicaraguan Passport indicating that [REDACTED] 1993, was her date of birth. Notwithstanding this information, the Petitioner has maintained that her correct date of birth is [REDACTED] 1994, and that she was 20 years old when she filed the SIJ petition. In the record before the Director, she provided a birth certificate that she claimed referred to her with the name [REDACTED] listing [REDACTED] 1994, as the date of birth, and containing the name of the Petitioner’s mother as the only parent. The Petitioner also submitted a baptismal certificate containing the name [REDACTED] which listed both of her parents and stated that [REDACTED] 1994, was her date of birth. She further provided a *Certificate of No Record*, dated March 2002, from the Registry of Civil Status of Persons of Managua stating that no birth certificate existed for her in 2002 when her parents attempted to register her birth, and that they claimed that her date of birth was [REDACTED] 1994. The Petitioner additionally provided affidavits from herself, her aunt, and her sister that she submitted to the Family Court explaining her mother’s use of the name [REDACTED] for her, that her mother had registered her birth three different times under different names, that the Petitioner had used an incorrect birth certificate to obtain a passport so that she could flee Nicaragua, and that she lacked a proper and accurate birth certificate.

Based on this evidence, we informed the Petitioner in the NOID that the record contained insufficient evidence establishing that she was the same person as [REDACTED] and it lacked sufficient documentation such as a national ID, school records, and other credible evidence to establish [REDACTED] 1994, as her date of birth rather than the [REDACTED] 1993, date of birth that appeared in her passport.

In response to the NOID, the Petitioner provides a Nicaraguan birth certificate with Apostille obtained in September 2021 from the Central Registry of Civil Status of People, Supreme Electoral Council. The birth certificate contains the name [REDACTED] and states that [REDACTED] 1994, is the date of birth. She additionally provides a copy of the biographical page of her passport containing the same name and date of birth as the birth certificate. In addition, she provides a *Certificate* from the General Directorate of the Central Registry of the Civil Status of the People of Nicaragua, also consistent with the birth certificate and passport, which states that the nullity of [REDACTED] is duly registered. Finally, the Petitioner provides an affidavit from an attorney in Nicaragua explaining her investigation into the Petitioner’s correct name and date of birth and the process of working with the appropriate government authorities to correct her official documents.

As previously stated, petitioners must submit documentary evidence of their age “in the form of a valid birth certificate, official government-issued identification, or other document that in USCIS’ discretion establishes the petitioner’s age.” 8 C.F.R. § 204.11(d)(2). Upon *de novo* review, the corrected birth certificate and passport, nullity of [REDACTED] as a name and identity of the Petitioner, and explanation from her attorney satisfy this evidentiary requirement, establish [REDACTED] 1994, as the Petitioner’s date of birth, and demonstrate that she was under 21 years of age when she filed her SIJ petition.

F. USCIS’ Consent

SIJ classification may only be granted upon the consent of DHS, through USCIS, where a juvenile meets all other eligibility criteria. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). To warrant USCIS’ consent, 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. *See* 8 C.F.R. § 204.11(b)(5). For USCIS to consent, petitioners must establish the juvenile court order or supplemental evidence includes the factual bases for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5)(i). 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).

The Director concluded that USCIS’ consent to the Petitioner’s SIJ classification was not warranted because the initial SIJ order lacked a reasonable factual basis for the Family Court’s findings. We withdraw this determination, as the Petitioner’s affidavit to the Family Court and SIJ orders describe abusive behavior toward the Petitioner by her father, including beatings, as well as her mother’s mental breakdown and inability to care for her. A *Court Ordered Investigation* by the New York City Administration for Children’s Services, also in the record, provides further detail regarding the abuse and neglect by the Petitioner’s father. The amended SIJ order further states that after reviewing evidence and hearing testimony, the Family Court determined that due to a lack of family members to care for her, the Petitioner would be left destitute and homeless upon return to Nicaragua.

In addition, the Petitioner has submitted evidence establishing her correct date of birth and explaining the reasons for the discrepancies concerning her age. Multiple affidavits explain the discrepancy between the dates of birth; specifically, an aunt who was present shortly after the Petitioner’s birth attested to the correct date, and the Petitioner and her sister described the mental health concerns regarding their mother that contributed to the failure to correctly register the Petitioner’s birth. The Petitioner has provided an order from the Nicaraguan Civil Registry, identifying her birth certificate with the 1994 date of birth as the only birth certificate recognized by the Nicaraguan government. She also submitted a copy of her Nicaraguan passport with the 1994 date of birth. Finally, the Petitioner provided a Family Court order issued *nunc pro tunc*, finding the court had jurisdiction over her as a person under the age of 21 at the time. Notably, this order was issued after considering evidence of the discrepancies in dates of birth—thus, the Family Court found that the evidence supported a finding that the 1994 date of birth was correct.

The evidence on the record establishes that the Petitioner obtained the SIJ orders in proceedings granting relief from parental maltreatment and includes the factual basis for the Family Court's findings. The record also demonstrates that the Petitioner has satisfied the remaining eligibility requirements for SIJ classification. Consequently, the Petitioner has established that she is eligible for and merits USCIS' consent to her SIJ classification.

ORDER: The appeal is sustained.