



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

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

In Re: 18949043

Date: OCT. 18, 2022

Motion on Administrative Appeals 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 New York, New York District Office initially approved the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), but subsequently revoked the approval. The Petitioner filed an appeal, which we dismissed. The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner submits additional evidence and asserts his eligibility for SIJ classification. Upon review, we will grant the motion to reopen and sustain the appeal. The motion to reconsider is moot.

**I. LAW**

A motion to reconsider is based on an incorrect application of law or policy to the prior decision and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

To establish eligibility for SIJ classification, a petitioner 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 of their 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner in the custody of a state agency or an individual or entity appointed by the state or 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 petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

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 a 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. 8 C.F.R. § 204.11(b)(5). 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. *Id.* 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

The Petitioner filed his SIJ petition in October 2016. In December 2016, the Director approved the SIJ petition, but subsequently revoked the petition after issuing a notice of intent to revoke (NOIR). In November 2018, we dismissed the Petitioner's appeal. In our prior decision on appeal, incorporated here by reference, we determined that the Petitioner had not overcome the Director's determinations that the New York Family Court was not acting as a juvenile court for SIJ purposes when it issued the guardianship and SIJ orders as the Petitioner was over 18 years old at the time; that the family court SIJ order was deficient because it lacked a qualifying parental reunification determination; and that USCIS' consent to the Petitioner's SIJ classification was not warranted. We also discussed the inconsistencies in the record regarding the Petitioner's father's identity and date of death and whether the Family Court was aware of these inconsistencies when it made the parental reunification finding.

On motion, the Petitioner submits a brief. In the brief, the Petitioner asserts that he is a member of the *R.F.M. v. Nielsen* class and contends that the family court did specify the applicable state law in the SIJ order upon which the parental reunification determination was based. Moreover, the Petitioner provides documents regarding his father's identity and date of death including a copy of his passport, school records, and a letter from a hospital confirming his date of death.

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 held that USCIS erroneously required that the New York Family Court have authority to order the 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' 18<sup>th</sup> and 21<sup>st</sup> 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 18<sup>th</sup> and 21<sup>st</sup> birthdays." *R.F.M. v. Nielsen*, Amended Order, No. 18 Civ. 5068 (S.D.N.Y. May 31, 2019).

We acknowledge that the Petitioner is a class member and in accordance with the district court's orders in *R.F.M. v. Nielsen*, the guardianship and SIJ orders establish that the Family Court was acting as a juvenile court when it appointed a guardian for the Petitioner and declared him dependent on the Family Court. Furthermore, our concurrence with the Director's determination that the record lacked a qualifying parental reunification determination because the Family Court did not have jurisdiction

to make a legal determinations on the viability of parental reunification is also withdrawn. Furthermore, on motion, the Petitioner has provided evidence resolving apparent inconsistencies on the record such that the record reflects that the request for SIJ classification was bona fide.

In our prior decision on appeal, we found that the record does not establish that the Petitioner's SIJ request is bona fide, such that consent is warranted, given inconsistencies in the record regarding his father's identity and date of death which had not been overcome and of which the family court did not appear to have been informed.<sup>1</sup> On motion, the Petitioner submits evidence regarding his father's identity and date of death including a copy of his passport, school records, and a letter from a hospital confirming his date of death, as well as an affidavit from an individual detained with the Petitioner by U.S. Customs and Border Protection stating that there was no interpreter and they had difficulty answering questions in English. Upon review, we find that these documents resolve the deficiencies in the record regarding the Petitioner's father's identity and date of death and, therefore, the Petitioner has established that USCIS' consent to his SIJ classification is warranted.

### III. CONCLUSION

The Petitioner has provided documentary evidence sufficient to establish his eligibility. Consequently, on motion to reopen, the Petitioner has demonstrated his eligibility for SIJ classification.

**ORDER:** The motion to reopen is granted and the appeal is sustained.

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<sup>1</sup> The Petitioner submitted a death certificate for his father indicating that the latter passed away in 2006, but his 2013 nonimmigrant visa application named his father as the person paying for the Petitioner's trip to the United States, and government records indicated that during questioning by U.S. Customs and Border Protection in 2015, the Petitioner stated that his father was residing in India. We found on appeal that information on the record did not resolve these discrepancies and other inconsistencies related to his father's identity.