



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

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

In Re: 18431575

Date: SEP. 14, 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 National Benefits Center denied the petition, and we subsequently dismissed the Petitioner's appeal of that decision. We then dismissed the Petitioner's combined motions to reopen and reconsider our decision and an appeal of our dismissal of the combined motion. The matter is now before us on second combined motion to reopen and to reconsider. On second motion, the Petitioner submits a brief and additional evidence to establish 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 reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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).

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).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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

In our decision dismissing the Petitioner's combined motion to reopen and reconsider, incorporated here by reference, we determined that the Petitioner had not met his burden to establish eligibility for the SIJ classification because the record lacked a qualifying parental reunification determination. Specifically, we indicated that the record contained an *ORDER – Special Immigrant Juvenile Status* (SIJ order) issued by the Family Court of the State of New York, [REDACTED] (Family Court) finding that the Petitioner's reunification with his parents was not viable and explaining that the Petitioner's father was deceased and that his mother could not care for him and could not provide emotional or financial support. However, we noted that the SIJ order did not specify the ground (abuse, neglect, abandonment, or a similar basis) under New York law that applied in the Petitioner's circumstances. We addressed additional evidence submitted on motion, including the transcript of the Family Court proceedings and affidavits, but noted that these materials did not indicate that the Family Court found reunification with one or both of the Petitioner's parents was not viable due to abuse, neglect, abandonment, or a similar basis under New York state law.

On motion to reopen, the Petitioner submits a document titled *2nd AMENDED ORDER – Special Immigrant Juvenile Status* (amended SIJ order) issued by the Family Court containing a qualifying parental reunification determination. In this amended SIJ order, the Family Court, citing to its jurisdiction under section 661 of the New York Family Court Act and section 1701 of the New York Surrogate Court's Procedure Act, finds that the Petitioner's reunification with both of his parents is not viable due to abandonment and to a similar basis under sections 661(a) and 1012(f)(i) of the New York Family Court Act and under sections 371 and 384-b(5) of the New York Social Services Law. The Family Court provides a factual basis for this determination, explaining that the Petitioner's mother is unable to care for him and that his father is dead. To demonstrate that the death of a parent constitutes a similar basis under state law preventing reunification with that parent, the Family Court cites to *Matter of Luis R. v. Maria Elena G.* 120 A.D.3.d 581 (N.Y. App. Div. 214) in addition to the above-referenced statutes. As the Petitioner has met his burden on motion of establishing that the Family Court made the requisite qualifying determination that his reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, he has met his burden to establish that he is eligible for and merits USCIS' consent to his request for SIJ classification.

On motion to reconsider, the Petitioner contends that he is a class member as certified in *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019) and requests that we reconsider our prior decision in light of this.² In the instant case, the Director did not deny on the ground that the Family Court lacked

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. 365 F. Supp. 3d at 377-80. The court's judgment certified a class 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

jurisdiction to enter SFOs for juvenile immigrants between their 18th and 21st birthdays. The record therefore does not establish that the Petitioner is a class member as certified in *R.F.M. v. Nielsen*.

However, the motion to reconsider is moot as on motion to reopen, the Petitioner has established that he is eligible for and merits USCIS' consent to his request for SIJ classification.

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

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).