



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

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

In Re: 16025448

DATE: MAR. 23, 2023

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). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. The Director of the Long Island, New York Field Office (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is now before us on appeal, which we review de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss 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), (c)(1).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. 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 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,

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. See Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

neglect, abandonment, or a similar basis under State law. *See* section 101(a)(27)(J)(i)–(iii) of the Act; *see also* 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 establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2016, when the Petitioner was 19 years old, the New York Family Court for [] (Family Court) appointed guardianship of the Petitioner to her aunt, F-A-², finding that such appointment “shall last until the [Petitioner’s] 21st birthday.” On the same date, the court also issued a separate order (SIJ order), which determined, among other SIJ eligibility findings, that the Petitioner was dependent upon the court, that her reunification with one or both her parents was not viable “due to abandonment of her parents refusing to provide her with shelter, food or any other parental care” and that it was not in her best interest to be returned to Nigeria, her country of nationality.

Based on the Family Court orders, the Petitioner filed her SIJ petition in [] 2016. In response to the Director’s request for evidence, the Petitioner submitted a [] 2018, *nunc pro tunc* SIJ order (amended SIJ order), which cited New York state law for the court’s reunification determination and further clarified that the Petitioner’s parents also failed to support her financially and emotionally.

The Director denied the SIJ petition, concluding that the Petitioner did not establish that the court exercised jurisdiction over her as a juvenile under state law as she was over 18 years of age and over the age of majority in New York when the court made the SIJ related findings, and that the evidence did not establish that the court made a qualifying parental reunification determination under state legal authority to determine whether her parents would be able to regain custody of her where she had reached the age of majority when the court made the determination. The Director also determined that although the amended SIJ order references the state provision defining an abandoned child in support of the court’s parental reunification finding, that provision did not apply to the Petitioner as she was over 18 years old at the time and not a juvenile under state law. The Director further determined that the court’s best interest determination lacked a factual basis such that the Petitioner’s request for SIJ classification did not warrant USCIS’ consent.

On appeal, we issued a notice of intent to dismiss (NOID). In our NOID, we acknowledged that the Petitioner had overcome the specific grounds on which the Director denied the SIJ petition. We nonetheless notified the Petitioner of our intent to dismiss her appeal because the record contains a material conflict related to SIJ eligibility requirements such that she has not demonstrated that her request for SIJ classification is bona fide and warrants USCIS’ consent. The Petitioner timely responded to our NOID with a brief and additional evidence.

² We use initials for privacy.

B. S.D.N.Y. Judgment and Applicability to the Petitioner

On appeal, the Petitioner maintains that the Family Court was acting as a juvenile court when it issued the court orders and made the guardianship appointment in her case after her 18th birthday.

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*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019). In *R.F.M. v. Nielsen*, the district court found 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. 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. The district court 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' 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).

Here, the record 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, and we therefore withdraw the Director's determination to the contrary.

C. USCIS' Consent Is Not Warranted

Although the Petitioner has overcome the Director's ground for denial, the record on appeal does not establish her eligibility for SIJ classification as she has not established that her request for such classification warrants USCIS' consent.

As stated, a request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *Id.* To establish that USCIS' consent is warranted, the juvenile court order or supplemental evidence must include the factual bases for the parental reunification and best

interest determinations and must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5). If, however, the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS may withhold consent. 8 C.F.R. § 204.11(b)(5).

As explained in our NOID, the record contains evidence that materially conflicts with the Family Court's parental reunification determination and the factual bases on which the court relied in making the determination. We specifically identified information in the record reflecting that in 2014 and again in [] 2016 (one week before the SIJ order was issued), the Petitioner and her parents indicated in their respective U.S. nonimmigrant visa (NIV) renewal applications (in which the Petitioner was a child of the principal visa applicant, her father) that they lived together at the same address in the United States at the time of those applications.³ In [] 2016, one month after obtaining the SIJ order, the Petitioner filed her SIJ petition, using the same [] New York address that she and her parents used in their [] 2016 NIV applications as her residence. As our NOID advised, the information in the NIV renewal applications indicating the Petitioner resided with her parents in the United States at the time the [] 2016 SIJ order was issued materially conflicts with the court's finding in that order that the Petitioner's reunification with both her parents is not viable due to abandonment in part because they refused to provide her with *shelter*. Although the Family Court's 2018 *nunc pro tunc* order clarifies the court's original [] 2016 parental reunification determination, the court did not modify or withdraw this earlier determination or the underlying factual findings for that determination. Regardless, the evidence indicating the Petitioner resided with her parents at the time of the SIJ order also conflicts with the court's 2018 *nunc pro tunc* findings that her parents "failed to financially . . . support [her] since 2015" and that her guardian aunt had "physical custody" of her.

In response to our NOID, the Petitioner admits that she lived with her mother in [] New York for five years, but claims that her mother abandoned her in December 2015 and that she started living with her guardian aunt. In response to our NOID, she submits documents indicating that she lived in [] New York, including high school documents from 2013 and 2014, a 2014 employer letter, and a 2015 state identification card. However, the [] address listed on these documents is the same address the Petitioner and both her parents specifically identified on their respective 2014 NIV applications as their residential address at the time and is from a period prior to her 2016 claim of parental abandonment before the court. Regardless, these documents do not address the material inconsistency arising from her assertions in her [] 2016 NIV renewal application and [] 2016 SIJ petition that she was residing at the time in [] New York, the same address her parents identified as their address on their [] 2016 NIV renewal applications. She also submits a January 2016 renewal notice for a lease, which appears to have expired in February 2017 and lists the Petitioner, her guardian aunt, and two other individuals as tenants at a [] address and includes renewal terms for the time period from 2017 to 2019. This evidence, however, conflicts with the assertions on the Petitioner's [] 2016 SIJ petition and related forms that she dated and signed, as well as her [] 2016 NIV application, that she was living in [] New York.

The Petitioner's arguments and evidence in response to our NOID also do not reasonably explain why the [] 2016 NIV renewal applications indicate that she and her parents both identified the same

³ The 2014 NIV applications indicate the same [] New York address as the family's residential address, and the 2016 NIV applications indicate the same [] New York address as the family's shared residential address.

residential address in [] New York, if, in fact, her parents had abandoned her, and she had been residing with her guardian since December 2015 as she maintained during her [] 2016 court proceeding and as she claims on appeal. Although the Petitioner asserts through counsel⁴ that her attorney advised her to use the [] address belonging to an aunt⁵ for the SIJ petition as a “stable” or “secure” “primary address” due to the Petitioner’s unstable living situation in the last six years, as stated, her parents’ [] 2016 NIV applications reflect that the [] address was *their* residence at the time and the Petitioner herself does not otherwise explain in her NOID response why she would use her parents’ address as a stable or secure address in her [] 2016 renewal NIV application or on her SIJ petition, if they had abandoned her at the time as she asserted.⁶

The Petitioner also asserts that the NIV applications were filed in Nigeria and that her father has never lived in the United States. However, these assertions are unsubstantiated and inconsistent with USCIS records and her father’s NIV applications, indicating that her father has lived in this country and filed his NIV renewal applications while residing here. The record otherwise lacks independent, objective evidence to support the Petitioner’s argument that—contrary to her assertions on her [] 2016 SIJ petition and what the NIV renewal applications indicate—she was residing at a separate address from that of her parents’ at the time the court made the SIJ eligibility findings and the SIJ petition was filed.

We also disagree with the Petitioner’s assertions that we are improperly going behind the court orders and making a factual finding that she currently lives with her parents or alternatively, that she was living with them during her juvenile court proceedings. Special Immigrant Juvenile Petitions, 87 Fed. Reg. at 13086 (“USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law.”); *see also* 6 *USCIS Policy Manual* J.2(A), <https://www.uscis.gov/policy-manual> (providing guidance to officers on deference to juvenile court findings made under state law and explaining that we do not go behind a juvenile court order to make independent determinations about abuse, neglect, abandonment, or a similar basis under state law). USCIS generally defers to the court on matters of state law and do not reweigh evidence or make independent determinations about parental reunification or best interest. 6 *USCIS Policy Manual*, *supra*, at J.2(A). However, as stated, petitioners bear the burden to establish their eligibility for SIJ classification, including that their request for SIJ classification is bona fide and merits USCIS’ consent. *Matter of Chawathe*, 25 I&N Dec. at 375. USCIS may withhold such consent where the record contains material conflicts related to SIJ eligibility requirements indicating that the request is not bona fide. 8 C.F.R. § 204.11(b)(5). Here, the Petitioner has not met her burden to overcome derogatory evidence in the record that materially conflicts with the court’s parental reunification determination that she cannot reunify with both her parents due to their abandonment. Considering the foregoing, the

⁴ Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, the Petitioner herself did not submit a statement explaining why her parents’ [] address is listed as her residence on her 2016 SIJ petition and in her 2016 NIV application.

⁵ It is unclear if this is a different aunt or the same guardian aunt who was granted physical custody of the Petitioner.

⁶ In response to our NOID, the Petitioner also submits a document titled “Memorandum of Law” which appears to have been prepared for the Family Court’s guardianship and SIJ determinations. However, it is unclear whether this document, which is missing the last 6 pages, was actually submitted to the court. Moreover, although this document specifically relies on the Petitioner’s and her guardian aunt’s affidavits (cited as Exhibits “A” and “B”), she did not submit these affidavits for our review. Neither this document nor the remaining evidence otherwise addresses the material discrepancies in the record regarding her claim of parental abandonment.

Petitioner has not established that her request for SIJ classification is bona fide and warrants USCIS' consent. 8 C.F.R. § 204.11(b)(5).

ORDER: The appeal is dismissed.