



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

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

In Re: 05392053

DATE: MAR. 4, 2021

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 the Petitioner's Form I-360, Petition for Special Immigrant (SIJ petition) and the Petitioner appealed that decision to the Administrative Appeals Office (AAO). 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). Pursuant to that judgment, the Petitioner has established his eligibility and the appeal will be sustained.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner cannot reunify with one or both 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(c). 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 the juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to his or her parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii).

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 the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act. *See also Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 2, 6-7 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). The petitioner bears the burden of proof to demonstrate his or her 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 [REDACTED] (Family Court) appointed guardianship of the Petitioner to S-E-P-,¹ finding that such appointment “shall last until the [Petitioner’s] 21st birthday.” On the same day, the Family Court issued a separate order titled *SPECIAL FINDINGS ORDER* (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 over matters of his guardianship.” The Family Court held that the Petitioner’s reunification with his mother and father was not viable due to his parents’ neglect and abandonment and that it was not in his best interest to be removed from the United States and returned to Mexico, his country of nationality.

Based on the Family Court orders, the Petitioner filed this SIJ petition in November 2018. Along with the SIJ order and guardianship order, the Petitioner submitted the underlying family court documents, including a memorandum of law, various affidavits, petition for appointment as guardian of person, his birth certificate, and his father’s death certificate. The Director denied the petition for lack of a qualifying finding regarding parental reunification. The Director concluded that the evidence did “not establish that the court issuing the order had the authority to determine whether the allegedly unfit parent should regain or lose custody of [the Petitioner]” because he had already reached the age of majority in New York when the Family Court orders were issued.

On appeal, the Petitioner submits a brief, copies of various case law, copies of various New York State statutes, a copy of a letter from NYC Administration for Children Services, a copy of an affidavit from a retired judge, and a copy of a Law 360 Article.

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 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’ 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).

¹ We use initials to protect the privacy of individuals.

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 orders in the Petitioner's case establish his eligibility for SIJ classification under section 101(a)(27)(J)(i) of the Act.

III. CONCLUSION

The Petitioner has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification. The Director's decision is withdrawn and the appeal is sustained.

ORDER: The appeal is sustained.