



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

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

In Re: 03956969

DATE: MAR. 4, 2021

Appeal of Holtsville, 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 Holtsville, New York, Field Office (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 2018, when the Petitioner was 18 years old, the New York Family Court for [redacted] (Family Court) appointed guardianship of the Petitioner to R-Z-,<sup>1</sup> finding that such appointment “shall last until the [Petitioner’s] 21<sup>st</sup> birthday.” On the same day, the Family Court issued a separate order titled *ORDER-Special Immigrant Juvenile Status* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was “dependent on the Family Court having been placed in a guardianship by this Court.” The Family Court held that the Petitioner’s reunification with his father was not viable due to his father’s abandonment and neglect and that it was not in his best interest to be removed from the United States and returned to El Salvador, his country of nationality.

Based on the Family Court orders, the Petitioner filed this SIJ petition in March 2018. 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 Petitioner’s father should regain or lose custody of him or if he could be reunified with his father because he had already reached the age of majority in New York when the Family Court orders were issued. The Director also denied the SIJ petition finding 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 custody and care of juveniles.” The Director further held that there was no factual basis for the best interest determination and that the Family Court was not fully informed when making its best interest determination; therefore the Director withheld USCIS’ consent.

On appeal, the Petitioner submits a brief, copies of documents filed in support of the SIJ order, and previously submitted documents.

### 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. 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 New York Family Court Act (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 held that USCIS erroneously required that the New York Family Court have authority to order reunification and return a juvenile to the custody of the parent(s) who abused, neglected, abandoned or subjected the juvenile to similar maltreatment in order to

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<sup>1</sup> We use initials to protect the privacy of individuals.

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).

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 him dependent on the Family Court, and the order contains a qualifying parental reunification finding..

### C. USCIS Consent is Warranted

SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where a petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS' consent, petitioners must also establish that the requisite juvenile court or administrative determinations were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating requirement "that neither the dependency order nor the administrative or judicial determination of the [juvenile's] best interest was sought primarily for purpose of obtaining the status of an [individual] lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect")). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS' consent is warranted and the agency must consider whether the juvenile court's determinations were sought in proceedings granting relief from parental maltreatment, beyond an order with factual findings enabling an individual to file an SIJ petition with USCIS. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511, n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs agency to determine "primary purpose" of request for SIJ findings); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from SIJ petition unsupported by sufficient evidence that petitioner sought court order to obtain relief from parental maltreatment, and not primarily to obtain immigration benefit, as *USCIS Policy Manual* explained).

The Director found that the Petitioner did not warrant USCIS' consent because the Family Court did not make an informed decision regarding the best interest finding and because the Court did not consider a placement for the Petitioner in his home country. However, the SIJ order provides a sufficient factual basis on which to base our consent. The Court specifically noted in the SIJ order that "the child would have no one who would be able to care for, protect or support him" in El Salvador, and that his guardian is the "only available and adequate caretaker for the child." Moreover, the Petitioner submitted copies of the documents submitted to the Court, including the Memorandum of Law in Support of Motion for Special Findings and affidavits from the Petitioner and his guardian,

which also provide facts that support the Court's best interest determination. The SIJ order and the underlying documents in the record establish a reasonable factual basis for the court's determinations. The Petitioner has shown that he sought the SIJ orders to gain relief from his father's neglect and abandonment and not primarily to obtain an immigration benefit. Accordingly, USCIS' consent to the Petitioner's SIJ classification is warranted.

### 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.