



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

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

In Re: 4173419

Date: MAR. 8, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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). Upon *de novo* review and pursuant to that judgment, the Petitioner has established her eligibility and we will sustain the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that they are unmarried, under 21 years of age, and have 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). A 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 a petitioner's best interest to return to their, or their 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, through U.S. Citizenship and Immigration Services (USCIS), when a petitioner meets all other eligibility criteria and establishes that the juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. *Id.* at 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [redacted] 2017, when the Petitioner, a native and citizen of Vietnam, was 20 years of age, the New York Family Court for [redacted] (Family Court) appointed guardianship of the Petitioner to T-N-V,¹ concluding that such “appointment shall last until the [Petitioner]’s 21st birthday.” In [redacted] 2017, the Family Court also issued an *ORDER–Special Immigrant Juvenile Status* (SIJ order), determining among other conclusions necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was “dependent upon the Family Court.” The court further determined that the Petitioner’s reunification with her parents was not viable as a result of abandonment under New York state law because “they stopped supporting the[] [Petitioner] financially and emotionally since October 2016 . . . and [their] admission that they are unable to provide support or care for the [Petitioner]” In addition, the court determined that it was not in the Petitioner’s best interest to be removed from the United States and returned to Vietnam, her country of nationality, “because of the lack of family support; threat of forced marriage if she were to return to Vietnam”

In June 2017, based upon the court’s orders, the Petitioner filed her SIJ petition. The Director considered the evidence and denied the SIJ petition for lack of a qualifying finding regarding parental reunification. The Director concluded that the record did “not establish that the state court had jurisdiction under state law to make a legal conclusion about returning [the Petitioner] to [her] parent(s)’ custody” because she had already attained the age of majority in New York when the court issued its orders.

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 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’s guardianship and SIJ orders establish the Petitioner’s eligibility for SIJ classification under section 101(a)(27)(J)(i) of the Act.

¹ Names have been withheld to protect an individual’s identity.

III. CONCLUSION

The Petitioner has met her burden to establish that she is eligible for and warrants USCIS' consent to her SIJ classification. The Director's decision is withdrawn, and the appeal is sustained.

ORDER: The appeal is sustained.