



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

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

In Re: 6639563

Date: MAR. 11, 2021

Appeal of New York, New York District Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of India, 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 New York, New York District Director denied the petition, and the Petitioner appealed the decision to this office. 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 the appeal will be sustained.

I. LAW

Petitioners bear the burden of establishing eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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 of their 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). 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. 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).

SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), when a petitioner meets all other eligibility requirements and establishes that the juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 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] 2016, when the Petitioner was 19 years old, the New York Family Court for the [redacted] (Family Court) appointed guardianship of the Petitioner to J-C-A,¹ determining that the Petitioner consented to the guardianship and that “the appointment shall last until the [Petitioner]’s 21st birthday[.]” On the same day, the Family Court issued a separate *ORDER - Special Immigrant Juvenile Status* (SIJ order) containing SIJ-related determinations. “[A]fter examining the motion papers . . . supporting affidavits [and] pleadings . . . and hearing testimony,” the Family Court ordered the Petitioner dependent upon the court for matters relating to her guardianship and determined that the Petitioner’s reunification with her father was not viable due to abandonment “in that the father has failed to financially support the [Petitioner] since 2010, and has had no contact with the [Petitioner] since 2010.”² The Family Court also determined that it was not in the Petitioner’s best interest to return to India, her country of nationality, because “she has not been [there] since 2010 and has no one there to live with or care for her[.]” The Petitioner filed her SIJ petition based upon the Family Court’s orders. With her SIJ petition, the Petitioner submitted a memorandum of law filed with the Family Court in support of her guardianship and SIJ orders. The memorandum of law argued that the Petitioner was abandoned by her father as that term is defined under relevant New York state law and that, pursuant to relevant New York state law, it would not be in her best interest to return to India.

The Director denied the SIJ petition, concluding that the Petitioner had not demonstrated that the Family Court was acting as a juvenile court when it entered its orders or that it had jurisdiction under state law to make legal conclusions about the Petitioner’s custody because she had already reached the age of majority in New York when the Family Court orders were issued. The Director also determined that the SIJ orders did not contain qualifying parental reunification or best interest determinations.

B. S.D.N.Y. Judgment and Applicability to 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 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 their 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”

¹ Initials are used to protect the individual’s identity.

² In the SIJ order, the Family Court also determined that the Petitioner’s reunification with her mother was not viable due to neglect. However, because the Act only requires a determination that a petitioner’s reunification “with [one] or both . . . parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law[.]” we need not analyze the Petitioner’s eligibility for SIJ classification as it pertains to her mother. Section 101(a)(27)(J)(i) of the Act.

and whose SIJ petitions were denied on the ground that the Family Court “lacks the jurisdiction and authority to enter [SIJ related orders] for juvenile immigrants between their 18th and 21st birthdays.” *R.F.M. v. Nielsen*, Amended Judgment, 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 guardianship and SIJ orders establish that 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. The SIJ order, when considered alongside the memorandum of law filed in support of it, also contains qualifying parental reunification and best interest determinations supported by New York law. The Family Court guardianship and SIJ orders establish the Petitioner’s eligibility for SIJ classification under section 101(a)(27)(J)(i) of the Act and the Petitioner has demonstrated that USCIS’ consent to a grant of SIJ classification is warranted in this matter.

III. CONCLUSION

The Petitioner has met her burden of establishing 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.