



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

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

In Re: 2434698

Date: AUG. 16, 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). *See* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner's court orders lacked qualifying parental reunification and best interest determinations and the Petitioner did not establish that U.S. Citizenship and Immigration Services' (USCIS) consent to her request for SIJ classification is warranted. The matter is now before us on appeal. Subsequent to the filing of the Petitioner's appeal, the District Court for the Southern District of New York issued a judgment in *R.F.M. v. Nielsen*, No. 18 Civ. 5068 (S.D.N.Y. April 8, 2019, amended May 31, 2019). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review and pursuant to the *R.F.M.* judgment, the appeal will be sustained.

**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).<sup>1</sup> 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).

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

---

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

classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (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, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)–(iii) of the Act; 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 demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

### A. Relevant Factual and Procedural History

In [ ] 2017, when the Petitioner was 18 years old, the [ ] Family Court in New York appointed guardianship of the Petitioner to M-N-<sup>2</sup> finding that such appointment would last “until the subject’s 21st birthday” (guardianship order). In a separate order issued on the same day and titled *ORDER – Special Juvenile Status* (SIJ order), the Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that pursuant to section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate’s Court Procedure Act (N.Y. Surr. Ct. Proc. Act), the Petitioner was dependent upon the Family Court. The Family Court also found that the Petitioner’s reunification with her father and mother was not viable due to abuse, neglect, and abandonment, pursuant to section 384-b(5)(a) of the New York Social Services Law (N.Y. Soc. Serv. Law) and relevant case law, and that it was not in her best interest “to be removed from the care and custody of [M-N-], and returned to Vietnam,” her country of nationality, pursuant to section 1707 of the N.Y. Surr. Ct. Proc. Act and relevant case law. The Family Court orders formed the basis of the Petitioner’s SIJ petition, which she filed in December 2017.

The Director denied the petition,<sup>3</sup> concluding that as the Petitioner had attained the age of majority<sup>4</sup> in New York when the orders were granted, the Family Court did not have jurisdiction under New York law over the Petitioner’s custody as a juvenile. Similarly, the Director determined that the Family Court did not have jurisdiction to make the judicial determination that the Petitioner’s reunification with one or both of her parents was not viable because she had already reached the age of majority in New York when the relevant Family Court orders in her case were issued. The Director further concluded that the Family Court did not make a qualifying best interest determination because the SIJ order indicated that it was not in the Petitioner’s best interest to be removed to Vietnam, a determination not within the authority of the Family Court. Finally, the Director determined that USCIS’ consent to the request for SIJ classification was not warranted because there was not a reasonable factual basis for the Family Court’s findings and the Family Court did not make an

---

<sup>2</sup> We use initials to protect the privacy of individuals.

<sup>3</sup> The Director issued a Notice of Intent to Deny the SIJ petition prior to the denial, which we incorporate by reference. However, the Director’s conclusions remained the same in the denial of the SIJ petition.

<sup>4</sup> Although the Director indicated the Petitioner was 20 years old at the time the SIJ order was issued, the Petitioner was in fact 18 years old on November 3, 2017.

informed decision on the best interest determination. The Director noted discrepancies in the Petitioner's statements at the time of her nonimmigrant visa interview and indicated that she did not submit evidence to show that the Family Court was aware of those discrepancies.

On appeal, the Petitioner asserts that the Family Court order did use language that the specific parental reunification and best interest determinations were made pursuant to New York law, and the court's determination that it is not in the Petitioner's best interest to be returned to her home country is supported by a clear factual basis. The Petitioner also explains, in response to the discrepancies raised by the Director, that she never attended school in the United States on a student visa and that her uncle made all of the arrangements for her to come to the United States.

#### B. *R.F.M.* Judgment and Juvenile Court

To be eligible for SIJ classification, juveniles must have been the subject of a "juvenile court" order that contains the requisite judicial determinations regarding parental reunification and the Petitioner's best interest. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b)(4), (c)(1). The term "juvenile court" is defined as "a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles." 8 C.F.R. § 204.11(a). Although the specific title and type of state court may vary, SIJ petitioners must establish that the juvenile court "exercised its authority over the petitioner as a juvenile and made the requisite judicial determinations in this paragraph under applicable State law." 8 C.F.R. § 204.11(c)(3)(i). In making this determination, state law, not federal law, governs the definition of "juvenile," "child," "infant," "minor," "youth," or any other equivalent term for juvenile which applies to the dependency or custody proceedings before the juvenile court. *See* 8 C.F.R. § 204.11(a), (c)(3)(i) (requiring courts to have jurisdiction over and make determinations about juveniles under applicable state law); *see also Budhathoki v. Nielsen*, 898 F.3d 504, 513 (5th Cir. 2018) ("Although the regulation permits an applicant for SIJ status to be someone who has not yet become age 21, what controls on eligibility for that status is the state law governing decisions over the care and custody of juveniles"); Final Rule, Special Immigrant Juvenile Petitions, 87 Fed. Reg. at 13077 (indicating that state law governs the definition of juvenile and other similar terms).

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 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 the New York Family Court Act (N.Y. Fam. Ct. Act) 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 last 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 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 [Special Findings Orders (SFOs)] 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.* class. In accordance with the District Court's orders in that case, the Family Court was acting as a juvenile court and properly exercised its jurisdiction when it appointed a guardian for the Petitioner, declared her dependent on the Family Court, and determined that her reunification with both of her parents was not viable.

#### D. Best Interest Determination

SIJ classification requires an administrative or judicial determination "that it would not be in the [juvenile's] best interest to be returned to the [juvenile's] or parent's previous country of nationality or country of last habitual residence[.]" Section 101(a)(27)(J)(ii) of the Act. A petitioner must submit evidence of a best interest determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions. 8 C.F.R. § 204.11(c)(2). While the standards may vary among states, the best-interest determination generally refers to the deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) when deciding what types of services, actions, and orders will best serve a child, as well as who is best suited to take care of a child. *See* U.S. Department of Health and Human Services, Children's Bureau, Child Welfare Information Gateway (2020), *Determining the Best Interests of the Child*.

The Director concluded that the SIJ order did not contain a qualifying best interest determination because the Family Court found that it would not be in the Petitioner's best interest to be removed to the parent's previous country of nationality or country of last habitual residence, rather than finding that it would not be in his best interest to return to his country of nationality. However, although the Family Court stated in the SIJ order that it would not be in the Petitioner's best interest to "be removed from the care and custody of [M-N-]," it also found that it would not be in her best interest to be "returned to Vietnam, her country of nationality" as required under section 101(a)(27)(J)(ii) of the Act. The Family Court noted that "there is no one who able or willing to care for the [Petitioner]" and "there is no one able to provide the [Petitioner] with a safe home and provide for her needs" in her country of nationality or last habitual residence. Furthermore, the SIJ order specifically references New York case law underlying the best interest finding, and the record reflects that the Family Court appointed a guardian for the Petitioner in proceedings under section 661 of the N.Y. Fam. Ct. Act and section 1707 of the N.Y. Surr. Ct. Proc. Act. Those provisions specify that the court may appoint a permanent guardian for a child if it finds that such appointment is in the best interest of the child. Accordingly, the SIJ order is sufficient to show that the Family Court made the determination concerning the Petitioner's best interest pursuant to state law. Therefore, the Petitioner has established by a preponderance of the evidence that the juvenile court made a qualifying best interest determination under New York law, as section 101(a)(7)(J)(ii) of the Act requires, and we withdraw the Director's determination otherwise.

#### E. USCIS' Consent Is Warranted

As stated, petitioners must satisfy all other SIJ eligibility criteria and establish that their request for SIJ classification is bona fide for USCIS to grant consent to SIJ classification. Section 101(a)(27)(J)(i)–(iii) of the Act; 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. 8 C.F.R. § 204.11(b). If 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. *Id.* USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents 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)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.*

Here, contrary to the Director's decision, our review does not reflect evidence in the record that contradicts or otherwise materially conflicts with the Family Court's parental reunification and best interest determinations based on its findings of abuse, abandonment, and neglect by the Petitioner's father and mother or the factual findings on which those determinations were based. *See* 8 C.F.R. § 204.11(b)(5) (stating that USCIS may withhold consent if the evidence materially conflicts with the SIJ eligibility requirements such that the request for SIJ classification is not bona fide). Likewise, the evidence in the record does not conflict with the Petitioner's assertions before the Family Court as set forth in the guardianship petition and other underlying documents presented to the Court.

In support of its determination that the Petitioner's reunification with her father and mother is not viable, the Family Court, in the SIJ order, found that her parents failed to provide for her care and custody, failed to financially and emotionally support her, and failed to provide her with food, clothing, shelter, educational, and medical needs, as defined under New York law, because they sent her to live with an uncle who sexually and physically abused her, and her parents would not allow her to return home (when she asked them for help), thus neglecting their parental obligations as they abandoned her. The underlying documents submitted to the Family Court by the Petitioner, including the guardianship petition, the motion for special findings, the attorney affirmation in support of motion, and the Petitioner's affidavit to the Court, is consistent with and supports the Family Court's reunification and best interest determinations and related factual findings.

In reference to the discrepancies in the record, the Director noted that, during a nonimmigrant visa interview, the Petitioner indicated that her parents paid for her to attend school in Maryland and therefore, her statements regarding her parents' involvement in her life are inconsistent with the Family Court's finding that her parents failed to provide for her. In response, the Petitioner explained that, although she used a student visa to enter the United States, she never attended school in Maryland or anywhere else in the United States on a student visa. She also indicated that her uncle made all of

the arrangements for her to come to the United States and she had no knowledge of what her uncle submitted to obtain the student visa. She further stated that her parents have never paid for any school that she knows of. The Petitioner asserts that the Family Court was aware of all the facts she had knowledge of and the student visa was addressed in the underlying documents to the court. The Director further noted that, although the Petitioner indicated that her uncle completed all of her nonimmigrant visa forms and she was not aware of the information he listed on them, at her nonimmigrant visa interview she indicated that she did not receive help in completing her nonimmigrant visa application, which directly contradicts her statement to the Director. On appeal, the Petitioner maintains that her uncle told her he was sending her to the United States to visit a cousin and she has no knowledge of what her uncle submitted to obtain the student visa, but that she said whatever she could at the time of interview in order to secure an escape from her uncle in Vietnam. According to the Petitioner's affidavit presented to the Family Court, the Petitioner advised the Court that her uncle said he was sending her to the United States to visit a cousin, but got her a student visa instead and she never attended school in the United States.

Here, the record, including the SIJ order and the Petitioner's underlying documents to the Family Court, establishes that the Court relied on factual findings independent of the Petitioner's immigration status and means for entry into the United States, or statements made over the course of that process, when it made the requisite determination that the Petitioner could not reunify with her father and mother due to abuse, abandonment, and neglect. Consequently, evidence in the record does not materially conflict with the Family Court's parental reunification and best interest determinations and related factual findings, as set forth in the SIJ order, or the factual assertions of the Petitioner before the Court in support of those determinations.

As discussed, in determining whether consent is warranted, we look to the nature and purpose of the juvenile court proceedings and examine whether the Court's determinations were sought in proceedings granting relief from parental maltreatment, beyond the factual findings required to file an SIJ petition. Our do novo review here shows that the Family Court exercised jurisdiction over the Petitioner as a juvenile under New York state law in guardianship proceedings, the nature and purpose of which were to protect the Petitioner from further parental maltreatment. The SIJ order indicates that the Family Court determined that the Petitioner's reunification with her father and mother was not viable due to abuse, abandonment, and neglect under New York law, and as discussed, the record reflects the factual bases for that determination. The record further shows that the Family Court granted the Petitioner relief from her parents' maltreatment by granting guardianship of the Petitioner to M-N-. The Family Court also found that it was not in the Petitioner's best interest to be returned to Vietnam based on evidence before the Court. Finally, as discussed, our review of the record does not reveal evidence that materially conflicts with the Family Court's SIJ related determinations and the Petitioner's assertions before the court. Accordingly, the Petitioner has established that her request for SIJ classification warrants USCIS' consent and that she is otherwise eligible for SIJ classification.

### III. CONCLUSION

The Petitioner has overcome the grounds for denial of her SIJ petition, and has otherwise established that she is eligible for and warrants USCIS' consent to her request for SIJ classification.

**ORDER:** The appeal is sustained.