



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

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

In Re: 2735364

Date: AUG. 18, 2023

Appeal of New York District Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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). SIJ classification protects noncitizen children in the United States who cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. The Director of the New York District Office (Director) denied the Petitioner's Form I-360, Petition for Amerasian, Widow(er), Or Special Immigrant (SIJ petition), concluding that the record did not establish that the state court that issued the SIJ findings in this case had exercised its jurisdiction over the Petitioner as a juvenile when it issued those findings, and therefore he was not eligible for SIJ classification. Additionally, the Director stated that Family Court's order is deficient because the parental reunification determination lacked evidence of the New York state law upon which the court based its determination. Finally, the Director also concluded that, based on material inconsistencies in the record, the request for SIJ classification did not merit U.S. Citizenship and Immigration Services (USCIS) consent. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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, we will dismiss the appeal.

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).¹ 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

¹ 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).

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 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).

II. ANALYSIS

A. Relevant Evidence and Procedural History

The Petitioner claims that he was born in Vietnam in [REDACTED] 1997. The record indicates that he last entered the United States in September 2014 as an F-1 nonimmigrant student. In [REDACTED] 2017, when the Petitioner asserts that he was 20 years old, the New York Family Court for [REDACTED] (Family Court) appointed T-T-N-,² a family friend, as the Petitioner's guardian pursuant to proceedings brought under 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 guardianship order stated that "the appointment shall last until the [Petitioner's] 21st birthday" In a separate order titled *ORDER – SPECIAL JUVENILE STATUS* (SIJ order), also issued in [REDACTED] 2017, the Family Court determined, among other findings, that the Petitioner was "dependent upon the family court." The Family Court also found that the Petitioner's reunification with his father and mother was not viable due to abuse, neglect, and abandonment under New York law, but did not specify the New York state law upon which the court relied. The SIJ order included the court's factual findings that the Petitioner's father had "subjected the child to physical abuse and committed acts of domestic violence against the mother," that "both parents failed to provide support for the [Petitioner's] care and custody and have failed to emotionally support [the Petitioner]," and that both parents "failed to provide the child with food, clothing, shelter or medical care." In addition, the Family Court concluded that it would not be in the Petitioner's best interest to return to Vietnam, his country of nationality or last habitual residence, because "there is no one who is able or willing to provide the [Petitioner] with a home and provide for his needs."

Based on the SIJ order, the Petitioner filed this SIJ petition in May 2017. While the SIJ petition was pending, the Director issued a request for evidence (RFE) that the Family Court had jurisdiction over the Petitioner as a juvenile, and then a notice of intent to deny (NOID) the SIJ petition. The Petitioner responded to both notices.

² We use initials to protect identities.

The Director subsequently denied the SIJ petition, stating that the Family Court did not have jurisdiction over the Petitioner as a juvenile under state law when it issued the SIJ order because he was over the age of 18 years. The Director also concluded that the parental reunification determination in the SIJ order is legally deficient. Finally, the Director stated that USCIS' consent to the Petitioner's request for SIJ classification was not warranted because the record contained material inconsistencies regarding the Petitioner's claimed lack of relationship with his biological father, indicating that the Petitioner's primary purpose in seeking the juvenile court order was to obtain an SIJ order for immigration purposes rather than to obtain relief from parental maltreatment.

On appeal, the Petitioner asserts that the Family Court exercised jurisdiction over him as a juvenile under state law because he was considered a minor under the laws of New York until the age of 21 years, and that the Family Court's SIJ findings otherwise satisfy the statutory and regulatory requirements for SIJ classification.

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). 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 the Family Court Act (FCA) section 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 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 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.* 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 him dependent on the Family Court, and determined that his reunification with one or both of his parents was not viable. Accordingly, those grounds for denial have now been overcome.

Nevertheless, we are dismissing the appeal because the Petitioner's evidence does not show the New York case law upon which the Family Court relied in making its determination that family reunification was not viable. Because this issue is dispositive, we need not reach the issues as to whether the Family Court's SIJ order otherwise satisfies the requirements at section 101(a)(27)(J)(i)–(iii) of the Act and 8 C.F.R. § 204.11(b)(5), and USCIS consent is warranted. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

C. Lack of Qualifying Parental Reunification Determination

As discussed above, although the Family Court's SIJ order includes a determination that the Petitioner's reunification with his father and mother is not viable due to abuse, neglect, and abandonment under New York law, it does not specify the New York state law upon which the Family Court relied in making this determination. In response to the Director's RFE seeking evidence showing, among other things, the state law upon which the Family Court relied, the Petitioner included an August 2017 affidavit from a former chief administrative judge (judge) of the courts of New York, who stated that she was attaching a [] 2017 amended order that “explicitly cites to numerous provisions of state law” for the court's family reunification determination. However, as her August 2017 affidavit predates the Director's RFE she does not appear to be referring to the Petitioner's case. Moreover, in an accompanying letter, the Petitioner stated that the Family Court had granted a motion for a new order on [] 2017, that the order had been submitted for review, and that he was still awaiting the order from the Family Court. However, the Petitioner did not submit an amended order in response to the RFE. The Director subsequently issued the NOID, again advising the Petitioner that the record lacked evidence to show the New York state law under which the Family Court had made its parental reunification determination. In response, the Petitioner submitted a letter claiming that after “USCIS asked for an amended order with more information and state law,” the Family Court “was gracious enough to issue[] an amended order.” However, the record does not reflect that the Petitioner submitted an amended order in response to the NOID. Consequently, the Director denied the SIJ petition, concluding that the Family Court's SIJ order was legally deficient.

On appeal, the Petitioner submits a brief in which he asserts that the Family Court's “orders” contain specific information that the Director stated was missing and cites to relevant New York case law in his brief. However, the Petitioner does not include a copy of the previously referenced “amended order” with his appeal and it remains that the initial SIJ order from the Family Court does not reference the specific New York state laws upon which it based its determination that the Petitioner's reunification with his parents was not viable due to abuse, abandonment, and neglect.

We rely on the expertise of the juvenile court in matters of child welfare under state laws and do not reweigh the evidence to determine parental abuse, neglect, abandonment, or any similar basis under state law. *See 6 USCIS Policy Manual J.2(D)*, <https://www.uscis.gov/policymanual> (discussing, as guidance, the deference given to juvenile courts as it relates to issues of state law). However, the burden remains on the Petitioner to show that the Family Court's judicial determinations, including the parental reunification determination, were made under state law. *See 6 USCIS Policy Manual, supra*, at J.3(A)(1) (discussing qualifying juvenile court determinations and related evidence submitted

to the court that cite to state law). Although the Petitioner has shown that the Family Court's parental reunification was based on his claims that his parents subjected him to abuse, neglect, and abandonment, it remains that the initial SIJ order lacks information showing the New York state law on which the Family Court based its determination, nor does the initial petition to the Family Court cite to the relevant state law for this determination. Finally, although the Petitioner has repeatedly referenced an amended order citing to the New York state laws for the Family Court's parental reunification determination, the record does not include an amended order. Therefore, the Petitioner has not overcome the Director's conclusion that the SIJ order and the relevant evidence does not show the New York state law upon which the Family Court based its parental reunification determination. Section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

III. CONCLUSION

The Petitioner has not met his burden of establishing the New York state law upon which the Family Court based its parental reunification determination, as required. For this reason, the Petitioner has not met his burden of establishing, by a preponderance of the evidence, his eligibility for SIJ classification.

ORDER: The appeal is dismissed.