U.S. Citizenship and Immigration Services

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

In Re: 31054188

Date: NOV. 27, 2023

Appeal of Long Island, New York Field 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).

The Director of the Long Island, New York Field Office denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition) and the Petitioner appealed that decision to the Administrative Appeals 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).

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, a petitioner 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] The petitioner 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 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); 8 C.F.R. § 204.11(c)(2).

[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).

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. Section 101(a)(27)(J)(iii) of the Act. The petitioner must also establish that the request for SIJ classification is bona fide, which requires showing 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 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 Facts and Procedural History

In [ ]2017, when the Petitioner was 20 years old, the [ ]Family Court in New York issued an order appointing M-N-[2] as the Petitioner's guardian in guardianship 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 order stated that "the appointment shall last until the [Petitioner]'s 21st birthday . . . ." In a separate order issued 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 the Petitioner was dependent upon the Family Court and placed in the care and physical custody of M-N-. Additionally, the Family Court found that the Petitioner's reunification with her parents was not viable due to abuse and abandonment under New York law and set forth specific facts underlying that determination. Further, the Family Court concluded that it would not be in the Petitioner's best interest to be removed from the United States and returned to Vietnam, her country of nationality, and discussed the facts in support of that finding.

Based on the Family Court's orders, the Petitioner filed her SIJ petition in July 2017. The Director denied the 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 concluded that as the Petitioner was 20 years old and had attained the age of majority 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 and the guardianship issued upon her consent was not equivalent to a qualifying custodial placement. Furthermore, the Director determined that the record did not show a factual and state law basis for the Family Court's parental reunification and best interest determinations. The Director also stated 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. Finally, the Director determined that USCIS' consent is not warranted because records of the Petitioner's application for an F-1 nonimmigrant visa conflict with her claims before the Family Court that her parents had not provided for her education.

[2] We use initials to protect privacy.

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 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 N.Y. Fam. Ct. Act 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 them 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 was acting as a juvenile court when it appointed a guardian for the Petitioner and declared her dependent on the Family Court.

C. Parental Reunification Determination

The Act requires a juvenile court's determination that an SIJ petitioner's reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the petitioner was subjected to such maltreatment by one or both parents under state law. The Petitioner bears the burden of proof to demonstrate the state law upon which the juvenile court relied. *Id.* Accordingly, state court orders that only cite or paraphrase immigration law and regulations will not suffice if the petitioner does not otherwise establish the basis in state law for the juvenile court's reunification determination. *See generally* 6 *USCIS Policy Manual* J.3(A)(1), https://www.uscis.gov/policy-manual (providing guidance that orders "that just mirror or cite to federal immigration law and regulations are not sufficient.").

The Petitioner previously submitted a copy of the attorney affirmation filed before the Family Court in support of the petition for guardianship and motion for special findings. The attorney affirmation includes discussions of the definitions of abuse, neglect, and abandonment under New York child

welfare law and cites the relevant provisions. Additionally, the SIJ order cites the definition of an abandoned child at New York Social Services Law section 384-b(5)(a). The factual basis for the Family Court's determinations also appears in the attorney affirmation, the Petitioner's own affidavit to the Family Court, the petition for guardianship, and the SIJ order. Accordingly, the record establishes the state law and factual basis upon which the Family Court based its findings, and the Petitioner has shown by a preponderance of the evidence that the juvenile court made a qualifying parental reunification determination under New York law, as section 101(a)(27)(J)(i) of the Act requires.

D. Best Interest Determination

As stated, to be eligible for SIJ classification, the record must contain a judicial or administrative determination that it is not in the petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2). We have explained in policy guidance that the juvenile court must individually assess and consider the factors it ordinarily considers when making best interest findings. *See generally* 6 *USCIS Policy Manual*, *supra*, at J.2(C)(3) (explaining that the "child's safety and well-being are typically the paramount concern."). USCIS defers to the juvenile court in making such determination, which may vary between states, and does not require the court to conduct any analysis other than what is required under state law. *See id.*

The Director concluded that the SIJ order did not contain a qualifying best interest determination because the Family Court found it would not be in the Petitioner's best interest to be removed from the United States. Additionally, the Director concluded that the court did not cite state law in support of its best interest finding. 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-], and returned to Vietnam, [her] country of nationality . . . ." Contrary to the Director's determination, the Family Court did not make a finding about the Petitioner's removal from the United States, but instead addressed whether it would be in her best interest to be removed from the care and custody of her guardian. The evidence reflects the Petitioner resides with M-N- and the Family Court noted there is no one in Vietnam who is willing and able to care for the Petitioner and give her "a safe home and provide for her needs." Accordingly, the Family Court made the necessary individualized determination as required under section 101(a)(27)(J)(ii) of the Act.

Furthermore, while the SIJ order does not specifically reference New York law underlying the best interest finding, 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 interests 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 as section 101(a)(7)(J)(ii) of the Act requires, and we withdraw the Director's determination otherwise.

E. USCIS' Consent is Not Warranted

Although the Petitioner has overcome some of the Director's grounds for denial, she has not established eligibility for SIJ classification. As stated, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria, section 101(a)(27)(J)(i)-(iii) of the Act, and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish that 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. 8 C.F.R. § 204.11(b)(5). Where evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide, we may withhold consent. *Id.*

The Director determined that USCIS' consent was not warranted because when the Petitioner applied for an F-1 nonimmigrant student visa, she indicated that her father would pay for her travel to attend college in [redacted] Washington. The Director concluded that this conflicts with the information before the Family Court that the Petitioner's father abused her in part by forcing her to quit school at age 10 to beg for money on the street, and that her parents failed to provide for her educational needs.

The record reflects that the Petitioner submitted an application for an F-1 nonimmigrant student visa in November 2014. The visa application states that at the time of filing, the Petitioner was a student at the University [redacted] Vietnam, and that she intended to pursue a two-year period of study at a college in the state of Washington. The application lists the Petitioner's father as the person who would pay for the trip. The Petitioner appeared for a visa interview in December 2014 and her F-1 visa application was approved.

In her personal affidavit to the Family Court, the Petitioner stated that her aunt obtained a student visa for her and helped her come to the United States so that she could get away from her abusive father. She recalled that her father took her out of school when she was 10 years old and made her beg for money on the street. In the evenings, he would pick her up and spend the money she had collected on alcohol. If she had not earned enough money, her father would beat her. The Petitioner noted that she "never got to finish school because [her] father forced [her] out of school to beg for money."

On appeal, the Petitioner notes that the Family Court knew she entered the United States on a student visa that her aunt helped her obtain. In response to a notice of intent to deny from the Director, she submitted a statement claiming she does "not know how [her aunt] obtained the visa or what papers or forms . . . were submitted with the visa application." She reiterates she never attended high school because her father forced her to leave school when she was 10 years old, and her aunt got the visa to help the Petitioner escape her abusive father. The Petitioner states she gave the Family Court this same information during the hearing. According to the Petitioner, she never attended school in [redacted] and her father never would have paid for her schooling, as he spent the little money he had on alcohol.

The Petitioner's former counsel[3] also states in the brief on appeal that although the Petitioner attended an interview relating to her visa application, she "told the officer what she had to say in order to escape the violence and abuse" and people "fleeing their country do what they have to do . . . ." It is unclear

[3] The Petitioner has since retained new counsel but did not submit a new brief or additional evidence.

whether counsel intends to suggest that the Petitioner made false statements at her visa interview to facilitate leaving Vietnam. Even if the Petitioner did make such statements in an effort to flee her situation, the record does not show how she could have provided information in the interview consistent with that in the visa application if, as she claims, she was unaware of the application's contents. Regardless, the Petitioner does not address the visa interview in her own personal statement and counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Furthermore, although counsel states that the Family Court need not concern itself with the merits of a visa determination, the issue here is not whether the Petitioner was eligible for a student visa but whether the information she provided in that application materially conflicts with the information she gave the Family Court such that her SIJ petition is not bona fide.

The Petitioner has not established by a preponderance of the evidence that she merits USCIS' consent to her SIJ classification. As discussed, the record contains unresolved material inconsistencies between the information on the Petitioner's F-1 visa application and her claims before the Family Court. Although the Petitioner's visa application indicated that she was a current university student in 2014 and that her father would pay for her trip to study at a college in Washington, she informed the Family Court that her father forced her to stop attending school at age 10, which would have been around 2006. We acknowledge the Petitioner's claim that her aunt obtained the student visa on her behalf and that she was unaware of any of the information in it. However, the F-1 visa application bears the Petitioner's name and specifies that no one else helped her complete it, and it was submitted under penalty of perjury. The Petitioner also appeared for an interview relating to her application, leading to its approval. She has not provided sufficient evidence to credibly explain the claims in her application and related interview, under penalty of perjury, that she was a current university student whose father would pay for her travel to study in the United States.

Additionally, although the Director pointed out that the Petitioner would have needed to attend high school in order to enroll in a college program in the United States, the Petitioner has not addressed this issue aside from her statement that she did not attend high school. She has not explained whether she was actually enrolled in the [redacted] college listed on her visa application or, if so, how she could have enrolled in that program without having attended school past the age of 10 years. Although the Petitioner told the Family Court that she arrived on a student visa her aunt helped her obtain, the evidence does not show the court was aware of the other conflicting information listed there regarding her university attendance and her father's involvement. The contents of the student visa application materially conflict with the Petitioner's claims before the Family Court such that the evidence does not demonstrate that her request for SIJ classification is bona fide. *See* 8 C.F.R. § 204.11(b)(5).

USCIS' consent is not warranted in this case because the Petitioner has not established by a preponderance of the evidence that a primary purpose she sought the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under New York law.

## III. CONCLUSION

Although the Petitioner has overcome some of the Director's grounds for denying her SIJ petition, she has not established that she merits USCIS' consent to her SIJ classification.

**ORDER:** The appeal is dismissed.