



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

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

In Re: 28019003

Date: OCT. 10, 2023

Motion on Administrative Appeals 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 National Benefits Center denied the petition, concluding that the Petitioner did not establish that there was a reasonable factual basis for the juvenile court determinations that parental reunification with one or both of the Petitioner's parents was not viable and that it was not in his best interest to be returned to his country of birth or last habitual residence, and that inconsistencies in the record indicated that his request for SIJ classification was not bona fide. We summarily dismissed a subsequent appeal. The matter is now before us on motion to reopen.

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). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits an "AMENDED ORDER Special Findings" (amended order) issued by the Family Court of New York in and for the County which was issued in 2020, and a request to be included as a member of the *R.F.M. v. Nielsen* 365 F. Supp. 3d 350 (S.D.N.Y. 2019) class.

In *R.F.M. v. Nielsen*, the district court determined that United States Citizenship and Immigration Services (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 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).

Upon review of the Director's decision, the Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ Petition) was not denied on the ground that the Family Court "lacks the jurisdiction and authority to enter SFOs;" however, as noted above, his SIJ petition was denied as he did not establish that there was a reasonable factual basis for the juvenile court determinations that parental reunification with one or both of the Petitioner's parents was not viable and that it was not in his best interest to be returned to his country of birth or last habitual residence, and that inconsistencies in the record indicated that his request for SIJ classification was not bona fide. As such, we determine that the Petitioner is not a member of the *R.F.M. v. Nielsen* class.

The Petitioner also submits an amended order, which was issued in [] 2020, when he was 26 years old, and the order does not indicate that it was entered "nunc pro tunc" (now for then) or intended to be applied retroactively. Further, the Petitioner has not established that our summary dismissal of his appeal was in error. Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.