



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

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

In Re: 18488186

Date: OCT. 26, 2023

Appeal of National Benefits Center 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). *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 National Benefits Center denied the Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile) (SIJ petition), and 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 as moot because the Petitioner's SIJ petition was previously approved.

According to the record, the Petitioner filed his SIJ petition in [redacted] 2016 based on court orders issued by the New York Family Court for [redacted] County (Family Court) appointing guardianship of the Petitioner to A-B-C-¹ and making the determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Director denied the SIJ petition in March 2018, finding that the Family Court was not acting as a juvenile court, and 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 his consent was not equivalent to a qualifying custodial placement. The Petitioner then filed an appeal in April 2018, which we sustained in September 2019. In our decision we noted that, subsequent to the filing of the appeal, the District Court for the [redacted] District of New York issued a judgment in *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019). We concluded that the Petitioner is a member of the *R.F.M. v. Nielsen* class and, 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 him dependent on the Family Court.

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

In our decision sustaining the Petitioner's appeal in September 2019, we determined that the Petitioner met his burden to establish that he is eligible for and merits U.S. Citizenship and Immigration Services' (USCIS') consent to his SIJ classification. We may sustain the appeal and order the approval of the petition when a Petitioner establishes eligibility for the requested immigration benefit. *See AAO Practice Manual*, Ch. 3.14(a), <https://www.uscis.gov/aao-practice-manual>. However, subsequent to our decision to sustain the appeal and approve the SIJ petition, the Director issued a Notice of Intent to Deny the same SIJ petition in July 2020 and denied the petition in January 2021, after receiving a response from the Petitioner. The Petitioner then filed the instant appeal in March 2021.

In accordance with 8 C.F.R. § 204.11(h), unfavorable decisions on SIJ petitions may be appealed to the Administrative Appeals Office (AAO). An appeal decision is effective and final on the date of issuance, unless and until we reopen or reconsider the decision on motion or a federal court modifies or overrules it. *AAO Practice Manual, supra*, at Ch. 3.14. Once an appeal has been sustained, thereby ordering the approval of a petition, USCIS must either revoke a petition's approval² or allow the approval to stand. *See* 8 C.F.R. §§ 204.11(j)(2) and 205.2. In this case, the Director erred in denying the SIJ petition in January 2021 following our previous sustain in September 2019 of the Petitioner's first appeal and our determination that the Petitioner met his burden to establish SIJ eligibility. Because USCIS did not have jurisdiction to issue a NOID and subsequent denial of the Petitioner's SIJ petition, following the AAO's sustain of the Petitioner's first appeal, the prior approval of the petition stands. Accordingly, we will dismiss this second appeal as moot.

ORDER: The appeal is dismissed.

² When the necessity for the revocation of an approved petition comes to the attention of the Director, the Director may revoke the approval of that petition upon notice to the petitioner. *See* 8 C.F.R. § 205.2(a).