



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

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

In Re: 29846159

Date: OCT. 31, 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 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 sustain 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). 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. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

U.S. Citizenship and Immigration Services (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 Facts and Procedural History

In [REDACTED] 2017, when the Petitioner was 20 years old, the Family Court of the State of New York in the County [REDACTED] (Family Court) issued an order appointing Y-N-T-¹ as guardian of the Petitioner. 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) in accordance with the New York State Family Court Acts § 661 and the New York State Surrogate’s Court Procedure Act § 1701, 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 that she was “living with and has been committed to and placed in the care and physical custody of an individual, namely Y-N-T- . . . pursuant to the New York State Family Court Acts § 661, 1012, and the New York State Surrogate’s Court Procedure Act § 170, 1701.” Additionally, the Family Court found that the Petitioner’s reunification with her mother or father was not viable due to abandonment and neglect, and that it would not be in the Petitioner’s best interest to be removed to Vietnam, her country of origin. The SIJ order specified that the Petitioner’s parents had not “provided for her care and custody as they sold [the Petitioner] to an uncle who mistreated her. The mother failed to provide for food, clothing, shelter, educational and medical needs as required. The father and the mother failed in their parental obligations to [the Petitioner]. The parents failed to maintain a relationship or contact with [the Petitioner].” The SIJ order noted that the Petitioner had been abandoned by her parents as defined under New York State Social Services Law, Section 384-b(5)(a).

Based on the Family Court’s orders, the Petitioner filed her SIJ petition in December 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 18 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. The Director also determined that the Petitioner did not warrant USCIS’ consent to her SIJ classification as the Petitioner’s statements regarding how she obtained her nonimmigrant visa conflicted with information contained within the record.

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

¹ We use initials to protect the identity of individuals.

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, 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. USCIS' Consent is Warranted

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 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). For USCIS to consent, petitioners must establish the juvenile court order or supplemental evidence includes the factual bases for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5)(i).

In the instant matter, USCIS' consent is warranted because the Petitioner has established by a preponderance of the evidence that a primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under New York law, rather than to obtain an immigration benefit. Here, the SIJ order cited to New York State Family Court Acts § 661(a), § 115(c) and the New York State Surrogate's Court Procedure Act § 103 for its jurisdiction, declares the Petitioner dependent on the court, and includes the juvenile court's determinations that reunification with the Petitioner's mother or father is not viable due to abandonment and neglect and that it is not in the Petitioner's best interest to return to Vietnam. *See* 8 C.F.R. § 204.11(d) (evidentiary requirements for USCIS consent). The evidence submitted in response to the Director's notice of intent to deny (NOID), which included the Petitioner's affidavit, Y-T-N-'s affidavit, and an Attorney Affirmation in Support of Motion, also provides a factual basis for the parental reunification and best interest determinations. *See id.* The SIJ order further provided relief to the Petitioner in the form of

being placed in the custody of Y-T-N- pursuant to the New York State Family Court Acts § 661, 1012, and the New York State Surrogate's Court Procedure Act § 170, 1701.

In the decision, the Director stated that “the Family court did not make an informed decision on the best-interest determination” because the record contained the Petitioner’s testimony in support of her nonimmigrant visa application, which indicated that she attended a university in Vietnam and that her parents would pay for her education in the United States. The Director acknowledged that the Petitioner’s affidavit declared that her aunt assisted her in obtaining her nonimmigrant visa and that the Petitioner had no knowledge of how she obtained it; however, the Director stated that the statements in her nonimmigrant visa interview including “her statements regarding her father’s involvement in her life were inconsistent with the court’s finding that [her] father failed to provide educational needs for her.” The Director continued by stating that although the Petitioner claimed the Family Court was made aware of how she obtained her visa, “no evidence was provided to show that the court was aware of the discrepancies in [her] testimony and application.” However, we note that the affidavit which the Director was referencing, submitted in response to the NOID, was not a new affidavit, it was the affidavit signed by the Petitioner in August 2017, and provided to the Family Court prior to the Family Court making their determinations. Although the record contains information regarding the Petitioner’s nonimmigrant visa application, a nonimmigrant student visa application, related to an application to attend a university in the United States, does not question an applicant regarding their relationship with their parents, and the Petitioner has already acknowledged that she never attended university in Vietnam or in the United States and that a “broker” was used to obtain her nonimmigrant visa. On appeal the Petitioner contends that the Family Court was aware that she entered on a student visa, the student visa was addressed to the Family Court, and that she had not lived with her parents since she was 9 years old. As such, we withdraw the Director’s consent determination and conclude that the information provided by the Petitioner in support of her nonimmigrant visa does not create a material discrepancy with the information she provided to the Family Court.

As such, the Petitioner has established, by a preponderance of the evidence, that a primary reason she sought the juvenile court orders was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that she was granted such relief. Consequently, the Petitioner has demonstrated that she is eligible for and merits USCIS’ consent to her request for SIJ classification.

III. CONCLUSION

The Petitioner has met her burden to establish that she is eligible for and merits USCIS’ consent to her SIJ classification. The Director’s decision is withdrawn, and the appeal is sustained.

ORDER: The appeal is sustained.