



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 5631030

Date: SEPT. 18, 2020

Appeal of National Benefits Center Decision

Form I-360, Petition for 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 (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the Petitioner appealed that decision to the Administrative Appeals Office (AAO). 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). Pursuant to that judgment, the Petitioner has established his eligibility and the appeal will be sustained.

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) of the Act; 8 C.F.R. § 204.11(c). 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. 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).

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 juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019). Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

A. Relevant Facts and Procedural History

In [REDACTED] 2017, when the Petitioner was 18 years old, the [REDACTED] Family Court in New York issued an order appointing the Petitioner a guardian in guardianship proceedings brought under section 661 of the New York Family Court Act (FCA) and section 1707 of the New York Surrogate's Court Procedure Act (SCPA). 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 Immigrant 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." The court further determined that the Petitioner's reunification with his mother and father was not viable due to their deaths and that it was not in his best interest to be returned to the Ivory Coast, his country of nationality. The SIJ order included factual findings by the court in support of both determinations and cited various New York case law for the reunification determination.

Based on the Family Court orders, the Petitioner filed this SIJ petition in January 2018. In response to the Director's notice of intent to deny, the Petitioner submitted a second SIJ order, issued in [REDACTED] 2018 when he was 19 years old. The 2018 order clarified that pursuant to New York Social Services Law section 371(3) (relating to a "destitute child") and 384-b(4)(a) (authorizing an order committing the guardianship/custody of a child upon the death of both parents), as well as various New York case law cited in the order, the death of a child's parents constituted "a similar legal basis to abandonment, abuse and neglect under New York State law, due to which reunification with the child's parents is not viable."

The Director nevertheless denied the petition, concluding that the Family Court orders lacked a qualifying finding regarding parental reunification, as the evidence did "not establish that the state court had jurisdiction under state law to make a legal conclusion about returning [the Petitioner] to [his] parent(s)' custody" because he had already reached the age of majority in New York when the orders were issued. The Director determined that the reunification determination was also deficient because the record did not establish the specific child welfare ground to which death was similar and because the cited statute for "destitute child" applies to children under 18 years of age whereas the Petitioner was already over 18 when the reunification determination was issued.¹

¹ On appeal, we issued a notice of intent to dismiss (NOID), notifying the Petitioner of conflicting evidence in the record regarding his identity and the identities of his parents, whose claimed deaths served as the basis for the Family Court's reunification determination. Specifically, the record indicated that the Petitioner entered the United States on a passport and U.S. nonimmigrant visa issued under a different identity and the names of his parents listed on his nonimmigrant visa application were different from those listed for his parents on his birth certificate and on the death certificates of his claimed parents in the record from the Ivory Coast. In addition, the U.S. Visa Reciprocity and Civil Documents Schedule for the Ivory Coast indicated that death certificates were unavailable in that country. The Petitioner timely responded with additional secondary evidence of his asserted age and identity and the identities of his parents, including: his school records from the Ivory Coast; his World Health Organization vaccination card; his New York state license and other identification records and documents in the United States; his statement; the statements of his two sisters and their birth certificates establishing their relationship to the Petitioner; his uncle's statement; a new death certificate for his father; a copy of the original death of his mother; and various contemporaneous medical and hospital records relating to his parents' deaths. The Petitioner also provided credible and publicly available evidence showing that death certificates are available in the Ivory Coast.

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 at 377-80. 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 [SIJ-related 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 guardianship and SIJ orders establish the court's jurisdiction over the Petitioner's custody as a juvenile under New York state law.

Additionally, the Petitioner has overcome on appeal the Director's finding that the reunification determination based on the death of the Petitioner's parents was deficient because the record did not establish the child welfare basis (abuse, abandonment, or neglect) to which death was similar under New York law. Contrary to this finding, both SIJ orders below specifically contain the Family Court's determination that death was a similar basis to abuse, abandonment, and neglect under New York case law, and the second SIJ order specifically cited New York statutory and case law authority on which the court relied in concluding that death of a child's parents "a similar legal basis to abandonment, abuse and neglect" under New York law. We also withdraw the Director's determination that the Family Court's reliance on SSL section 371(3) (addressing a "destitute child") rendered the reunification determination deficient because that provision applies to children under 18 and the Petitioner was over 18 years of age. Although the Act requires USCIS to assess whether the record establishes that the Family Court's SIJ related findings were issued under state law, we defer to the court's findings made under state law. Here, the SIJ court order establishes that the Family Court made the requisite determination that the Petitioner's reunification with his parents was not viable due to a child welfare basis under New York law similar to abuse, abandonment, and neglect. Consequently, the record on appeal demonstrates that the Family Court made a qualifying parental reunification determination under section 101(a)(27)(J)(i) of the Act.

III. CONCLUSION

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

ORDER: The appeal is sustained.