



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

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

In Re: 19590640

Date: OCT. 25, 2022

Motion on Administrative Appeals Office 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 we dismissed the Petitioner's appeal. After our adjudication 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 filed a motion to reopen claiming class membership. In our decision on the motion to reopen, we informed the Petitioner that he was a member of the class, but ultimately dismissed the motion to reopen for reasons explained below.¹ The matter is now before us on a subsequent combined motion to reopen and reconsider. Pursuant to the *R.F.M. v. Nielsen* judgment, the Petitioner has established his eligibility and the motion to reopen will be granted and the appeal is sustained. The motion to reconsider is moot.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

To establish eligibility for SIJ classification, petitioners must establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under

¹ We note that the Petitioner's current combined motion indicates that it is a combined motion to reopen and reconsider of our February 2018 decision to dismiss his appeal; however, the Petitioner filed a motion to reopen on that decision, which we dismissed in December 2020. This decision is included in our reference here, as it contained critical details regarding the Petitioner's history and our prior determinations in his case.

state law. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b).² Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 petitioner's best interest to return to their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

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). 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). 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner is a citizen of India. In [REDACTED] 2015, when he was 20 years old, the New York Family Court for [REDACTED] (Family Court) appointed guardianship of the Petitioner to his aunt, P-K-³. The same day, the Family Court separately issued an *ORDER-Special Immigrant Juvenile Status* (SIJ order) making determinations related to the Petitioner's SIJ eligibility, which stated that its findings were "in accordance with 8 U.S.C. § 1101(a)(27)(J)," indicated that reunification with one or both of his parents were not viable due to neglect and a similar basis under New York law because the Petitioner's father died in 1996, and that his mother was chronically ill and could not support him, leaving the Petitioner alone and unattended for 4-10 days at a time. The SIJ order further noted that it was not in the best interest of the Petitioner to be returned to India.

In October 2015, based upon the Family Court's orders, the Petitioner filed his SIJ petition. The Director denied the SIJ petition, finding that the Petitioner did not warrant USCIS' consent. We subsequently dismissed the Petitioner's appeal. Specifically, we determined that the Family Court orders were not issued by a juvenile court, and the record did not contain a qualifying parental reunification determination because it did not specify a state child welfare law in determining that the Petitioner could not reunify with one or both of his parents. In addition, we found that the Petitioner did not warrant USCIS consent because the record lacked a reasonable factual basis for the Family Court's best interest determination and because the Petitioner was otherwise ineligible for SIJ classification.

² 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).

³ We use initials to protect the identity of individuals.

In our previous decision, issued in December 2020 and incorporated here by reference, we determined that the record established that the Petitioner is a member of the *R.F.M. v. Nielsen* class, and that the guardianship and SIJ orders established that 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. However, we determined that the SIJ order did not identify any New York state law under which the Family Court determined that a reunification with the Petitioner's parents was not viable due to neglect and/or a similar basis under New York law. We determined that the SIJ order instead specified that its determinations were made "in accordance with" federal immigration law. As such, we additionally determined that while there appeared to be a reasonable factual basis for the determinations in the SIJ order, the Petitioner did not warrant USCIS' consent to SIJ classification as there was no basis in state law for the Family Court's reunification determination.

On motion, the Petitioner submits an *AMENDED ORDER-Special Immigrant Juvenile Status Nunc Pro Tunc* (*nunc pro tunc* order).

B. Motion to Reopen

The Petitioner's motion to reopen is supported by the issuance of the *nunc pro tunc* order. While the *nunc pro tunc* order still references 8 U.S.C. § 1101(a)(27)(J)(i) regarding its reunification determination with the Petitioner's father, the Family Court includes further citations to New York case law that held "that reunification of the minor with one or both of his parents is not viable due to the death of his father" under *Matter of Luis R. v Maria Elena G* (120 AD3d 581, 2d Dept. 2014) as the "similar basis under state law," and noted that in the Petitioner's case, "reunification is not possible with the [Petitioner's] father as the [Petitioner's] father is deceased."

The *nunc pro tunc* order further assessed its reunification determination with the Petitioner's mother, finding that "[a] neglected child is a child whose parents or other person legally responsible for his care has failed to exercise a minimum degree of care by failing to provide adequate food, clothing, medical care, shelter, or education or by unreasonably inflicting or allowing physical harm, or by misusing alcoholic beverages and drugs to the extent that he or she loses self-control of his or her actions, New York State Family Court Act 1012." The *nunc pro tunc* order notes that reunification with the Petitioner's mother was not possible due to neglect, and that "[s]ince 1996 [Petitioner's] mother was frequently absent from home for 4-10 days at a time, leaving the [Petitioner] unattended and without adequate food. The [Petitioner's] mother is chronically ill and cannot support him."

Accordingly, the record establishes the state law upon which the Family Court based its findings, and the Petitioner has shown by a preponderance of the evidence that the Family Court made a qualifying parental reunification determination under New York law, as section 101(a)(27)(J)(i) of the Act requires. As a result, the Petitioner has also overcome our prior determination that USCIS' consent was not warranted.

C. Motion to Reconsider

As noted, a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of

law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. The Petitioner did not state the reasons for reconsideration; however, as we have determined that the Petitioner's motion to reopen would be granted and the appeal sustained, the motion to reconsider is moot.

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 motion to reopen is granted and the appeal is sustained. The motion to reconsider is moot.

ORDER: The motion to reopen is granted and the appeal is sustained.