[LETTERHEAD]

[DATE]

Via FedEx

Joseph H. Orlando

Clerk, Appellate Division

Superior Court of New Jersey

Hughes Justice Complex

25 W. Market Street

Trenton, New Jersey 08625

Re: [MOTHER] v. [FATHER], Docket No. [NUMBER]

Dear Mr. Orlando:

This firm is pro bono counsel to Appellant [NAME OF MOTHER] (“Appellant” or “[Ms. [LAST NAME OF MOTHER]]”) and her [SON/DAUGHTER], [NAME OF CHILD], in the referenced appeal. Please accept this letter in support of Appellant’s motion for remand, in lieu of a more formal submission.

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**Procedural History & Statement of Facts**[[1]](#footnote-1)

[NAME OF MOTHER] filed a petition for sole custody of [NAME OF CHILD] in the Superior Court of New Jersey, Family Part, [NAME OF COUNTY] County. She also requested that the Family Part make predicate factual findings, under 8 U.S.C. § 1101(a)(27(J) and 8 C.F.R. § 204.11, that would enable [NAME OF CHILD] to apply to federal immigration authorities for a form of immigration relief known as “Special Immigrant Juvenile” (“SIJ”) Status.

The Family Part granted [NAME OF MOTHER] sole custody over [NAME OF CHILD]. But, relying on this Court’s decision in H.S.P. v. J.K., 435 N.J. Super. 147 (App. Div. 2014), rev’d, 223 N.J. 196 (2015), the Family Part declined to make the predicate factual findings and stated in its order that [QUOTE FAMILY COURT OPINION DECLINING TO MAKE FACTUAL FINDINGS]. (Pa\_\_.)[[2]](#footnote-2)

This appeal of the Family Part’s refusal to make the SIJ findings-of-fact followed. [NAME OF MOTHER] then filed a motion before this Court seeking a stay of this appeal pending the Supreme Court’s decision in two cases: H.S.P., which the Family Part relied upon, and K.G. v. M.S. By order dated [DATE], the Appellate Division granted the Appellant’s motion to stay appellate proceedings until the Supreme Court decided H.S.P. and K.G.

We write to advise the Court that the Supreme Court decided H.S.P. and K.G. on August 26, 2015, and reversed the Appellate Division’s H.S.P. decision and the Family Part’s K.G. decision.[[3]](#footnote-3) See H.S.P. v. J.K., 223 N.J. 196 (2015).

**Argument**

Appellant respectfully requests that the Appellate Division remand this case to the Family Part to make each of the factual findings set out in 8 U.S.C. § 1101(a)(27(J) and 8 C.F.R. § 204.11, consistent with the Supreme Court’s decision in H.S.P. and K.G.

In its decision, the Supreme Court clarified that it was not the role of the Family Part to grant or deny SIJ Status. “[T]he determination of whether a child should be classified as a special immigrant juvenile rests squarely with the federal government.” H.S.P., 223 N.J. at 212 (“[T]here can be no legitimate argument that, as suggested by the trial court in K.G., a New Jersey family court has jurisdiction to approve or deny a child’s application for SIJ Status.”).

Instead, the Family Part has the “limited role” of making predicate factual findings: “The SIJ statute affirms the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child’s best interests.” Id. at 211-12 (citation and quotation marks omitted).

The Family Part in this case made the same error as the Family Part in K.G., which resulted in the Supreme Court’s reversal and remand. “[T]he trial court [in K.G.] erred in purporting to deny [the juveniles’] applications for SIJ status based on its conclusion that reunification with [the juveniles’ mother] was viable,” id. at 216, just as the Family Part here denied SIJ Status because [NAME OF CHILD’S] reunification with his mother is viable.

The Supreme Court reversed the K.G. trial court’s “determination” and directed the Family Part to make findings regarding “each element” of the SIJ statute, “including whether it would not be in the best interest of the juvenile to be returned to his or her country of origin.” Ibid. The Supreme Court also specifically “instruct[ed] courts of the Family Part to make separate findings as to abuse, neglect, and abandonment with regard to both legal parents of an alien juvenile.” Id. at 213.

Here, the Family Part never made any findings on abuse, neglect, or abandonment by [NAME OF CHILD’S] father and it never conducted a best-interests analysis.

Therefore, [NAME OF MOTHER] respectfully requests that this Court remand the case to the Family Part to consider each of the factors in the SIJ statute consistent with the Supreme Court’s instructions in H.S.P. and K.G. A proposed form of order is enclosed for the Court’s convenience.

Respectfully submitted,

[ATTORNEY NAME]

Enclosures

1. We have combined these sections because the facts and procedural history are intertwined. [↑](#footnote-ref-1)
2. This citation is to the appendix accompanying the Appellant’s motion to stay appellate proceedings. [↑](#footnote-ref-2)
3. The Supreme Court granted direct certification of the Family Part’s decision in K.G. See 220 N.J. 493 (2014). [↑](#footnote-ref-3)