



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

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

In Re: 26180583

Date: APR. 24, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ). See 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). 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), finding that the Petitioner was not under the age of 21 at the time of filing and does not warrant U.S. Citizenship and Immigration Services (USCIS)' consent as the record contains material inconsistencies. The Petitioner filed a combined motion to reopen and to reconsider, which the Director denied. We dismissed the Petitioner's appeal. The matter is now before us as a combined motion to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2)-(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). Upon review, we will dismiss the motion.

## **I. LAW**

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

One of the requirements petitioners must show to establish eligibility for SIJ classification is that they were "under 21 years old" at the time of filing of their petition. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b). Evidence of age can be in the form of a valid birth certificate, official government-issued identification, or other document that in USCIS' discretion establishes the petitioner's age. 8 C.F.R. § 204.11(b).

## II. ANALYSIS

### A. Relevant Procedural and Factual Background

We herein incorporate the relevant facts and procedural history discussed in the Director's January 2021 decision denying the SIJ petition and our decision on appeal. We highlight or add the below facts for our analysis of the instant motion. The record contains an affidavit by the Petitioner which was submitted to the State of New York Family Court, County [REDACTED] during his guardianship proceedings. In the May 2016 affidavit, the Petitioner attests to the following: being born on [REDACTED] 1998; his father owning a furniture store in Bangladesh; his father being involved in politics since 2013; being harassed and assaulted by an opposing political party in Bangladesh; attending school until June 2014; his father arranging his travel from Bangladesh; and leaving Bangladesh in June 2015. He explained he traveled for 6 months before reaching the United States in December 2015, traveling through 12 countries. In response to the Director's notice of intent to deny (NOID), the Petitioner submitted an affidavit dated July 2020 attesting to the following: an agent arranged for his travel to depart Bangladesh in 2015; gave him a passport with a different name<sup>1</sup> and a [REDACTED] 1992 date of birth; told him if he did not use the 1992 date of birth he would be treated as a minor and not reach the United States; and the passport evidencing his 1992 date of birth was taken away in Columbia.

In the decision denying the SIJ petition, the Director acknowledged the Petitioner included a copy of his birth certificate evidencing [REDACTED] 1998, as his date of birth but explained that records indicate that he previously used [REDACTED] 1992, as his date of birth while traveling outside of Bangladesh in 2013 and again when traveling outside of Bangladesh in 2015. The Director also noted that the Petitioner's birth certificate was registered in 2003, over four years after his alleged date of birth. The Director raised discrepancies in the record with respect to documents submitted in support of the Petitioner's age. For example, the Director noted that the record included a document by the principal of a school certifying that the Petitioner attended his school from 2005 to 2013 but in the 2016 affidavit submitted with his guardianship proceedings, the Petitioner claimed to have attended school until June 2014. The Director explained that the supplemental evidence submitted in support of the Petitioner's date of birth were dated after 2013, which was when he used his alternate date of birth and were either created after a NOID was sent to the Petitioner or report his date of birth as recorded in official records without including copies of the records. While not specified in the Director's decision, we include as an example, that the document by the principal is in English and states, "[a]ccording to the admission register his date of birth is [REDACTED] 1998." A copy of the admission register was not submitted with the document.

In our decision on appeal, we explained that we gave significant evidentiary weight to U.S. government records, which were based on the Petitioner's fingerprint records and indicated he used the 1992 birthdate while traveling outside of Bangladesh in 2013 and 2015. While we acknowledged the late-registered birth certificate, documents by the United Nations Children's Fund (UNICEF) and U.S. Department of State (DOS) providing context around the late registration, and other supplemental evidence in the form of affidavits and records submitted in the record below, we explained the birth certificate was given diminished evidentiary weight and the supplemental documentation provided, which also had evidentiary issues, were not sufficient to meet the preponderance of the evidence standard to establish the Petitioner was under 21 years of age at the time he filed his SIJ petition. In

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<sup>1</sup> According to the Petitioner, his last name was misspelled by one letter.

the instant motion, the Petitioner submits a verification of his birth certificate via the Bangladesh Online Birth Registration System<sup>2</sup> and a brief asserting our decision on appeal is “arbitrary, vague, and capricious, and a violation of petitioner’s procedural due process rights.”<sup>3</sup> The Petitioner’s brief further asserts that our decision was “flawed” because we “improperly contend” that the Petitioner has not met his burden of proof in establishing his age.

**B. The Petitioner has not established he was under 21 years of age when he filed his SIJ petition**

The issue on appeal was whether the Petitioner established he was 21 years at the age of filing his SIJ petition. As discussed above, it is the Petitioner’s burden to demonstrate his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. According to the Petitioner’s birth certificate, he was born in 1998 and his birth was registered in 2003. According to an article by UNICEF submitted by the Petitioner, births were not required to be registered in Bangladesh prior to 2006. The Director notified the Petitioner that additional evidence was required to establish his age because government records contained fingerprint evidence that the Petitioner used a 1992 date of birth, and the late-registered birth certificate did not overcome this inconsistency with respect to his age. In order to establish the authenticity of the birth certificate, the Petitioner submitted a copy of the DOS’s Reciprocity Schedule for Bangladesh, which describes the requirements for birth certificates, but does not speak to the authenticity of late-registered birth certificates. The Petitioner also submitted school records, affidavits, and a vaccination card. USCIS may consider affidavits or secondary evidence of age in order to evaluate whether the petitioner has met the petitioner’s burden of proof by the preponderance of the evidence. See generally 6 USCIS Policy Manual, *supra*, at J.3 (explaining, as guidance, acceptable documentation of age in the SIJ context). When adjudicating a benefit request under the preponderance of evidence standard, the officer examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is more likely than not or probably true. See generally 1 USCIS Policy Manual, *supra*, at E.6 (explaining, as guidance, the use of evidence in the adjudications process). The Director weighed the relevant evidence and explained that the documents provided were either procured after the NOID was issued or reference an official record, without providing the record. The Director also explained that the document by the principal attesting to the dates the Petitioner attended school contradicted the Petitioner’s 2016 affidavit. The Petitioner did not cure or explain the issues raised by the Director on appeal and we also gave the supporting documents less evidentiary weight in our *de novo* analysis.

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<sup>2</sup> We acknowledge the verification, which we noted was referenced but not provided in the underlying record.

<sup>3</sup> In the brief, the Petitioner’s counsel asserts that the law requires the Petitioner be afforded the procedural due process of an in-person interview relating to his SIJ petition. Counsel argues that the Petitioner has been grossly prejudiced because he has been deprived of the opportunity to supplement the record through sworn testimony. However, the Petitioner included affidavits in the record and had an opportunity to further supplement the record when responding to the two NOIDs issued below, when filing his combined motion to reopen and to reconsider with the Director, on appeal, and in the instant combined motion. Further, counsel does not provide any legal precedent for the assertion that the Petitioner is entitled to an in-person interview with respect to his SIJ petition and the regulations do not require an interview. See 8 C.F.R. § 103.2(b)(9) (providing USCIS may require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request, or any group or class of such persons submitting requests, to appear for an interview and/or biometric collection) (emphasis added); see generally 6 USCIS Policy Manual J.4(C)(1), <https://www.uscis.gov/policymanual> (explaining, as guidance, that USCIS conducts a full review of the petition and supporting evidence to determine whether an interview may be warranted and has discretion to interview SIJ petitioners).

In the supporting brief, the Petitioner's counsel asserts our decision on appeal "failed to take into account" the Petitioner's explanation for his late-registered birth certificate and "failed to explain" any "rational or reasoned basis" for why we "arbitrarily" discounted the evidence on the question of late registration of his birth. Counsel states the DOS and UNICEF documents discuss the birth registration system as "manual" and that "accurate records were not maintained" in Bangladesh prior to 2006 but simultaneously asserts this does not undermine the credibility and authenticity of the birth certificate. Counsel also states it was "arbitrary and highly prejudicial" and "grossly improper, highly egregious, and an unconscionable violation which deprives the [Petitioner] of fundamental fairness" for us to dismiss the appeal on "arbitrary grounds" such as delayed registration, when the Petitioner is a minor and had no control over registration of his birth. Counsel's brief describes our reasoning as "wholly improper, absurd, and irrational" and argues that we "simply ignored" and "rejected" the DOS's reciprocity schedule, which must be given significant weight, "without stating a specific rationale or explanation for dismissing" the reciprocity schedule. The Petitioner's explanation for why his birth certificate was filed late was acknowledged in the appeal decision. Also, we acknowledged the DOS's reciprocity schedule, however, it did not cure or add probative value to the Petitioner's late-registered birth certificate. Further, his petition was not denied solely on account of a late-registered birth certificate, but because the Petitioner did not meet his burden by a preponderance of the evidence to establish his age. As explained, our records have the Petitioner traveling in 2013 and 2015 using a 1992 date of birth. The Petitioner acknowledges using a passport with a 1992 date of birth that was authentic enough for him to travel through 12 countries. He attests to obtaining his passport through a travel agent prior to leaving Bangladesh and that he traveled for 6 months after leaving in 2015. He does not explain how he was able to travel in 2013 with the 1992 date of birth if he only obtained the passport to escape Bangladesh in 2015. On appeal, we found no error in the Director's analysis that the birth certificate and supporting documentation did not carry enough probative value to overcome government records.

Counsel's brief also argues that we do not address or mention the Petitioner's 2020 affidavit explaining the reasons for using an incorrect date of birth. Counsel states we "utterly failed to consider the significant fact that the [Petitioner] was the victim of human trafficking" and "was exploited by the agents and his family members in Bangladesh." Counsel argues our decision is a "legal absurdity" relying on a "highly improper practice" because we are "prejudicing" the Petitioner by not considering "the bad acts of travel agents and family members who controlled him and sent him to the [United States]."<sup>4</sup> Counsel further states the Petitioner was an underaged minor with no control over his acts and did not have the mens rea to commit fraud. Counsel asserts the Petitioner's parents neglected their responsibility when they did not register his birth, untimely obtained a birth certificate, and sent him on a perilous journey as a minor. The Petitioner's affidavit does not explain his 2013 travel or add credible and probative facts surrounding his date of birth, nor does it provide context or explanation around the supporting documents submitted. Further, the Petitioner's 2020 affidavit, when read together with his 2016 affidavit, describe him hiding from an opposing political party at

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<sup>4</sup> We also note that the Petitioner submitted affidavits by family members attesting to his 1998 date of birth. While the Director gave reduced weight to their statements because they were issued after the NOID, and we concluded no error in the Director's weighing of evidence on appeal, we note that counsel asks that we give more probative value to the family affidavits but at the same time requests that we acknowledge that the Petitioner's family members were extortive and manipulated records so the Petitioner could travel outside of Bangladesh. We also add that the affiants do not provide any identification corroborating their identities. They each mention a national identification number, but do not provide a copy of their national identity card. Because the Petitioner's date of birth is at issue, merely stating, for example, that they were present during the birth without more detail does not lend significant probative value to their statements.

home with his parents, and his father taking steps to protect him by sending him out of the country. The Petitioner stated that he was given a passport with an alternate spelling of his name and a 1992 date of birth and was told to use the 1992 date of birth or he would be unable to travel to the United States. Nowhere in the record does the Petitioner describe being unwilling to leave Bangladesh or alleges being trafficked or controlled by the agents or his family. He describes being provided with instructions on how to enter the United States without alerting authorities. Furthermore, our decision on appeal makes no reference to fraud or the Petitioner's intent. As is evident in the quoted language above, the Petitioner's counsel includes unsupported and misleading statements in the brief. We do not consider these statements as evidence. See, e.g., *Matter of J.J. Rodriguez*, 27 I&N Dec. 762, 765-66 (BIA 2020) (noting that statements by counsel are not evidence and are not entitled to evidentiary weight); *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022) (stating unsupported assertions and speculation have no evidentiary value).

Counsel then argues that we “utterly failed to analyze or adequately discuss the credible evidence submitted and the reasons for rejecting it.” However, counsel does not explain how the evidence in the record overcomes the evidentiary issues raised by the Director and in our decision on appeal. Rather, counsel attempts to shift the burden of proof to the agency by stating, we have “not offered one iota of evidence to contest candid and forthright explanations rendering the dismissal of the appeal unfair, irrational, highly prejudicial, and arbitrary” and for us “to burden the [Petitioner] with such requirements is highly arbitrary, grossly prejudicial, and contrary to the letter and spirit of the I-360 Petition for Special Immigrant, and relief from deportation which he humbly seeks.” However, the burden of proof is on the Petitioner to establish his eligibility. The Director explained the reasons why the supporting evidence was given less evidentiary weight and we found no error in the Director's analysis on appeal. Neither the Director's decision nor ours on appeal rejected any evidence provided.<sup>5</sup>

The Petitioner has not presented new facts or other documentary evidence establishing his eligibility for SIJ classification. 8 C.F.R. § 103.5(a)(2). Further, the Petitioner has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3). Therefore, the Petitioner has not established eligibility for the benefit sought.

ORDER:       The motion to reopen is dismissed.

FURTHER ORDER:       The motion to reconsider is dismissed.

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<sup>5</sup> On motion, the Petitioner notes that he also provided his vaccination card in support of his age in the record below. However, a photocopy of a vaccination card without supporting documentation, i.e., explaining what authority issued it, where it was issued, what source it relied upon for its contents, lessens its probative value. We therefore do not conclude that we erred in giving this evidence reduced evidentiary weight in our decision dismissing the appeal.