



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

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

In Re: 27546628

Date: AUG. 9, 2023

Motion on Administrative Appeals 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). *See* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 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 petition, and we dismissed the Petitioner's subsequent appeal, concluding that U.S. Citizenship and Immigration Services' consent to SIJ classification was not warranted. The matter is now before us on motion to reconsider. 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.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our previous decision, incorporated here by reference, we dismissed the Petitioner's appeal of the Director's denial, finding that the preponderance of the evidence did not establish that the Petitioner sought the Family Court orders primarily to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and that the court provided such relief. While we noted that the Petitioner indicated she would submit a brief and/or additional evidence within 30 calendar days of filing the appeal and we had not received her brief or any additional evidence at the time of adjudication, we did not summarily dismiss the appeal on this basis and proceeded to adjudicate the appeal, based on a de novo review, according to the evidence in the record. Specifically, we found that the record did not establish that the court provided any protective or remedial relief to the Petitioner for such parental maltreatment pursuant to the Massachusetts child protection provisions or any other Massachusetts law, as required to establish that USCIS' consent is warranted. We further noted that neither of the Family Court orders reflect that the court made either a dependency or custody determination, as required, and that the Petitioner must address this additional basis for ineligibility in

any future filings. Thus, we determined that USCIS's consent to a grant of SIJ classification was not warranted.

On motion to reconsider, the Petitioner submits a statement from Counsel along with a copy of the appeal brief she previously intended to submit. However, the Petitioner does not dispute or assert any error in our prior determination that USCIS's consent to a grant of SIJ classification was not warranted. Instead, the Petitioner asserts that although her Form I-290B, Notice of Appeal or Motion (Form I-290B), indicated she would submit a brief and/or additional evidence within 30 calendar days of filing the appeal, the appeal brief was submitted within the same FedEx package as the Form I-290B. According to the Petitioner's Counsel, he was able to finalize the legal brief and supporting documents by the end of the same day the Form I-290B was prepared, but because the Form I-290B and corresponding cover page had already been completed, he prepared a second cover page for the appeal brief and submitted the "two separate filings in the same FedEx package," which was received by USCIS.

We acknowledge the Petitioner's explanation that she had in fact timely mailed her appeal brief and supporting evidence. However, although she asserts it was mailed within the same FedEx package as the Form I-290B, it was sent to the wrong USCIS address rather than directly to us, as required. The Form I-290B instructions specifically require that any appeal brief and/or evidence submitted *after* filing a Form I-290B "must be sent directly" to us. The Petitioner's indication on the Form I-290B that she would submit a brief and/or additional evidence within 30 calendar days of filing the appeal, necessitates that she complies with this mailing requirement. As the Petitioner mailed the appeal brief and evidence to the wrong address, they were not part of the record before us at the time of our adjudication of the appeal in January 2023.<sup>1</sup> Nevertheless, we issued our decision based on a de novo review of the record and the Petitioner does not dispute or assert any error in our prior determination. Consequently, the Petitioner has not met her burden to demonstrate by a preponderance of the evidence that a primary reason she sought the Family Court orders was to obtain relief from parental maltreatment, rather than to obtain an immigration benefit. We therefore find no error in our previous determination that the Petitioner has not established that USCIS's consent to a grant of SIJ classification is warranted.

The Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reconsider is dismissed.

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<sup>1</sup> Additionally, we note that the appeal brief submitted on motion was copied virtually verbatim from the Petitioner's letter submitted in response to the Director's request for evidence.