U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27152595

Date: AUG. 17, 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) 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 denied the petition, concluding that the Petitioner did not establish that he was under the age of 21 at the time of filing and that he warranted the consent of U.S. Citizenship and Immigration Services (USCIS). We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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 motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

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)(i) of the Act; 8 C.F.R. § 204.11(b).[1] 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

[1] 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).

or an individual or entity appointed by the state or the juvenile court. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1). 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. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

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). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not *bona fide*. 8 C.F.R. § 204.11(b)(5).

II. ANALYSIS

In our previous decision, incorporated here by reference, we noted that government records indicated that the Petitioner had previously used a date of birth of [redacted] 1996, which conflicts with his claimed date of birth of [redacted] 1998, which is reflected on the birth certificates he had provided. We summarized the Director's determinations that the record contained inconsistencies regarding his date of birth, including the filing of his Form I-589, Application for Asylum or Withholding of Removal (asylum application). Specifically, the Petitioner had submitted a copy of a record from [redacted] School which indicated that he attended the school from 2003 until 2007, while his asylum application indicated that he attended [redacted] School from January 2003 until June 2014.

We acknowledged the documents the Petitioner submitted that list or refer to [redacted] 1998, as his date of birth. However, the birth certificate he initially submitted was registered in November 2007, issued in November 2015, and signed by the registrar in November 2016. We noted that as these dates are many years after his claimed date of birth, the evidentiary weight of the birth certificate is diminished. The record also contains the same birth certificate, but with the registrar signing it in September 2018. The Petitioner submitted an "original" of this version, and he included a different "original" birth certificate on letterhead for [redacted] Hospital. The latter version does not include a date of registration or issuance and the signature block for the signing physician indicates a different facility than [redacted] Hospital. Therefore, we gave these versions of his birth certificates diminished weight. More importantly, United States governments records, which are based on the Petitioner's fingerprints and as such are given significant weight, reflect that the Petitioner used [redacted] 1996, as his date of birth during multiple encounters outside the United States. Previously, the Petitioner asserted that when he arrived in Panama, his smugglers told him not to tell the Panamanian authorities his true age as they may harm him. However, we determined that there was no supporting evidence for this claim, and we gave it minimal weight. Based on the foregoing we concluded that the Petitioner had not established by a preponderance of the evidence that his actual date of birth is [redacted] 1998.

On motion, the Petitioner submits a brief, a personal statement, a copy of a passport record reflecting a [redacted] 1991 date of birth, copies of records obtained via Freedom of Information Act request from the United States Health and Human Services Office of Refugee Resettlement (ORR), copies of records from his USCIS file, and copies of birth documents already included in the record. The Petitioner asserts that these new facts establish eligibility, as he contends that he has established by a preponderance of the evidence that he was under the age of 21 at the time he filed his Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant (SIJ petition).

In his brief, the Petitioner contends that there is no material evidence in his record that reflects an alternate date of birth, aside from the government records that indicate that he provided the [redacted] 1996, date of birth to foreign authorities, associated with his fingerprints, which he maintains he was told to do by smugglers. In his updated statement, the Petitioner includes new information not previously noted, that he obtained a "smuggler-created" passport which indicated that his date of birth was [redacted] 1991, and that he used that passport from when he left Bangladesh until he entered Brazil. He claims that after he entered Brazil, the smugglers took this passport and he never saw it again. He states that the smugglers told him to use a fictitious date of birth which would make him over the age of 18, or he would be detained and returned. The Petitioner claims that when they reached Panama, this is when he used a fictitious date of birth, but "cannot recall exactly" the fictitious date of [redacted] 1996. The Petitioner further notes that he also gave a fictitious date of birth to Mexican immigration officials, before arriving to the United States when he began using the [redacted] 1998, date of birth.

The Petitioner discusses a smuggler-created passport bearing a [redacted] 1991, date of birth and passport number [redacted] and claims that we must have withheld knowledge of this information from him and indicates that this smuggler-created passport contains an invalid Bangladeshi Birth Registration Identification System (BRIS) number. He also states that we have not provided a BRIS number for the [redacted] 1996, date of birth previously noted in the record. In review of the Petitioner's file, the Petitioner had not previously disclosed the existence, or use, of a passport bearing a date of birth of [redacted] 1991, which he claims he used until he reached Brazil. While the Petitioner appears to contend that the existence of this additional birthdate and false passport should assist us in a determination that his [redacted] 1998, date of birth is his true date of birth, the admission of an additional false date of birth only lessens the weight given to his statements. In his statement, while he mentions the knowledge of the [redacted] 1991, date of birth on the false passport as well as a typographical error in his middle name, he does not explain why, after the false passport was taken from him, he would choose to further use a different date of birth of [redacted] 1996, and would not continue using the [redacted] 1991, date of birth that was included on the false passport.

The Petitioner further disputes our determinations regarding his birth certificate being considered late registered; however, the late registration was only one aspect of our review regarding his birth certificate. The Petitioner submitted multiple copies of birth certificates bearing different signatures and dates, as well as an "original" of this version, and he included a different "original" birth certificate on letterhead for [redacted] The latter version does not include a date of registration or issuance and the signature block for the signing physician indicates a different facility than [redacted] As such, we determine that we did not err in providing limited weight to the copies of his birth certificates.

Further, the Petitioner contends that the existence of the [redacted] School Record is not material to the determination of his age, and claims that the submission of this document was a mistake, compounded

by the Coronavirus-19 pandemic and his need to obtain documentation substantiating his age. In his statement, the Petitioner claims that he asked his uncle to obtain documents verifying his age, and does not know why his uncle sent these documents. We note that the Petitioner submitted letters from this school, which confirmed his attendance from 2003 until 2007; however, in his updated statement he now states that he "never attended [redacted] International School." The Petitioner states that the submission of the [redacted] School Record and the birth certificate from [redacted] was an "innocent mistake" and asks us to ignore the secondary evidence that he previously submitted in support of his age, but also asks that we provide greater weight to his own statements of his date of birth, which he admits to changing on multiple occasions.

The Petitioner further contends that we are collaterally estopped, or precluded, from determining that he has a date of birth different from [redacted] 1998, because the Department of Homeland Security (DHS) and ORR had previously accepted this as his date of birth. However, we disagree. *See Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 290 (5th Cir. 2005) (providing three requirements for issue preclusion to apply: "(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision."). In the absence of identification documents at the time of his apprehension, officials were able to record only the Petitioner's stated date of birth of [redacted] 1998. The Petitioner provided his date of birth to DHS and ORR verbally as he did not have a passport or other identifying documents, and those entities did not adjudicate or litigate the question of his date of birth. Each of the copies of the documents provided by the Petitioner from his time in ORR custody relate to his initial verbal claim of his date of birth being [redacted] 1998. As such, the issue has not been previously adjudicated or actually litigated and this legal doctrine does not apply to our determinations regarding the Petitioner's age. Furthermore, each application for an immigration benefit filed with USCIS constitutes a separate proceeding, and we are not bound by a factual determination from another office.

Finally, the Petitioner asserts that we have failed to provide him with any sufficient documentation or reliable evidence to contradict his true date of birth. However, we have reviewed the record, including the various documents the Petitioner submitted, which indicate that he has used multiple dates of birth, as well as provided secondary that he now admits are false. We conclude that he has not resolved our previous concerns with his documentation, while also submitting new documentation to indicate that he used the [redacted] 1991, date of birth as well. Further, regarding derogatory information of which a petitioner was unaware, USCIS must provide an opportunity to rebut the information before a decision is issued. 8 C.F.R. § 103.2(b)(16)(i) (stating that if a decision will be adverse to the petitioner and based on derogatory information of which they are unaware, USCIS is required to advise them of the derogatory information and provide an opportunity to rebut it before rendering a decision). USCIS is not, however, required to provide the petitioner with an exhaustive list or copy of the derogatory information. *See generally Matter of Obaigbena*, 19 I&N Dec. at 536 (stating that if an adverse decision will be based on derogatory information of which the petitioner is unaware, "the petitioner must be so advised . . ." and must have a "reasonable opportunity to rebut the derogatory evidence cited in" a NOID); *Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) (explaining that 8 C.F.R. § 103.2(b)(16)(i) "does not require USCIS to provide, in painstaking detail, the evidence of fraud it finds" and that a NOID provided sufficient notice and opportunity to respond to the derogatory information); *Hassan v. Chertoff*, 593 F.3d 785, 787 (9th Cir. 2010) (concluding that 8 C.F.R. § 103.2(b)(16)(i) requires only that the government make a petitioner aware of the derogatory

information used against them and provide an opportunity to explain; "[t]he regulation . . . requires no more of the government.").

Accordingly, in review of our previous decision and the record before us, we determine that the Petitioner has not met his burden of showing by a preponderance of the evidence that he was under the age of 21 years at the time he filed his SIJ petition, as required.[2]

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, 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 reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] Our prior decision noted that the Director also denied the SIJ petition as the Petitioner had not established that he warrants USCIS consent. As the Petitioner has not overcome our prior decision, and he does not address the issue of consent with his combined motions, we continue to decline to reach and hereby reserve the Petitioner's arguments that he warrants USCIS' consent. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).