



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

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

In Re: 28722189

Date: NOV. 15, 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* 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 does not warrant U.S. Citizenship and Immigration Services (USCIS)' consent as the record contains material inconsistencies. The Director also dismissed combined motions to reopen and reconsider. We dismissed his appeal and subsequent combined motions to reopen and reconsider. 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 motion.

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).

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

In our prior decision, incorporated here by reference, we discussed the Petitioner's history in seeking SIJ classification, and the inconsistencies in the record regarding his age. Specifically, we noted that government records indicated that the Petitioner had used a date of birth, [REDACTED] 1992, while outside of the United States, which conflicts with his claimed actual date of birth of [REDACTED] 1998. We acknowledged and discussed the evidence in the record, which was provided by the Petitioner in support of his contention that his actual date of birth is [REDACTED] 1998. This evidence included his birth certificate, which was registered in 2003, and the Petitioner's affidavits submitted in support of his Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), and subsequent motion and appeal. In our decision dismissing his appeal, we also analyzed and discussed additional evidence that he had provided, such as school records and school identification card, affidavits, a vaccination record, a photograph of the Petitioner, articles regarding birth registration in Bangladesh, and the Department of State Reciprocity Schedule for Bangladesh. However, we concluded that as the Petitioner bears the burden to establish that he was under 21 years of age at the time he filed his SIJ petition, we dismissed his motions, as he had not cured the inconsistencies in the record relating to his date of birth, nor did he establish that either the AAO or the Director had incorrectly weighed any of the evidence he had provided.

With the instant motions, the Petitioner provides a brief, a new affidavit, new evidence, and copies of evidence already contained in the record. In his new affidavit, the Petitioner provides an explanation of his previous travel outside of Bangladesh in 2013, where he first utilized the [REDACTED] 1992, date of birth. The Petitioner claims that his father was involved in politics and that his father and mother decided to send him to Brazil when he was 14 years old. He contends that his father arranged for a smuggler to take him to a passport office, and approximately two weeks later, when he left home with the smugglers, he was given the passport and noticed his last name was spelled differently¹, and that it had a different date of birth. The Petitioner states that he asked the smuggler the reason for the different date of birth and was told that he would not be able to fly out of Bangladesh as a minor. After this, the Petitioner flew through a number of countries before arriving in Brazil. With his motions, the Petitioner submitted a copy of the biographical page of the "smuggler created" passport bearing the [REDACTED] 1992, date of birth, as well as documents apparently issued by the Brazilian government which also bear this date of birth and allowed him to work while he lived there for nearly two years. The Petitioner contends that he does not know how the Brazilian documents were obtained or if they were legitimate documents.

The Petitioner further states that after he was harmed on multiple occasions while working in Brazil, he prepared the money to come to the United States, and that he still had the "smuggler created" passport at that time, and he began his trip to the United States in September 2015. He claims that when he reached Colombia, the smugglers took the passport, and he has not seen it since then. He further contends that the smugglers continued to tell him to use the [REDACTED] 1992, date of birth, as he passed through Central America and Mexico because he was afraid that he would be "held or sent back to Bangladesh" if he used the [REDACTED] 1998, date of birth. Once the Petitioner reached the United States border, he claims that he now began stating his date of birth as [REDACTED] 1998, and that the

¹ As noted in our prior decision, the Petitioner's last name was misspelled by one letter.

“immigration authorities asked me my name and date of birth so many times and interrogated me as if I was not telling the truth.”

In the new affidavit, the Petitioner now also claims that he “did not finish Class 9 because [he] was in Brazil in 2013” and he does “not know why the school documents said [he] was promoted to Class 10.” He contends that he should have reviewed the documents more carefully before submitting them to his prior attorney, and states that he and his prior attorney did not speak the same language, and the attorney did not have an interpreter.

However, the submission of the new affidavit, the copy of the “smuggler created” passport, and documents from his time living in Brazil are not sufficient to overcome our prior decision. In fact, the Petitioner’s statements in his new affidavit conflict with a prior affidavit, dated in January 2021, of which he submitted another copy with the instant motion. In the January 2021 affidavit, the Petitioner stated that he “did stop going to school in June 2014, when [he] was in tenth grade, as stated in [his] affidavit to the Family Court. [He] did not finish tenth grade because of threats of political violence. The School Letter that [he] submitted is in fact entirely consistent with [his] affidavit.” The Petitioner, on motion, does not reconcile these statements, aside from stating that he was “not able to communicate with [his prior attorney] efficiently or in detail” because they were not speaking his native language.

The submission of the new affidavit further conflicts with the Petitioner’s January 2021 affidavit in that the Petitioner, in the January 2021 affidavit, claimed that he only thought that his travel to the United States was relevant and that he was “always asked about [his] travel to the U.S. from Bangladesh, which was only in 2015” and that he was “never asked about [his] travels in 2013, and [he] simply forgot about it.” However, in the new affidavit, the Petitioner acknowledges that he lived in Brazil from 2013 until 2015 and did not return to Bangladesh prior to traveling to the United States.

The Petitioner also contends that USCIS is estopped from claiming that his true date of birth is anything other than [redacted] 1998, as other United States government agencies accepted [redacted] 1998, as his true date of birth. In support of his assertion, he submits medical records and documents created after his arrival to the United States, from agencies such as CBP and the Department of Health and Human Services Office of Refugee Resettlement. However, we have no authority to apply the doctrine of equitable estoppel. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991). Although federal courts may apply the doctrine against USCIS, we may not. *Id.*; *see also Chang v. United States*, 327 F.3d 911, 924 (9th Cir. 2003).

Finally, the Petitioner maintains that he “did not have any control over, or knowledge of the information used to create the smuggler-created passport” and that he also had no control over when his birth was registered, however, he has not cured the inconsistencies in the record regarding his date of birth, and he has further created additional inconsistencies outlined above with his new affidavit. The Petitioner asks that we disregard the letter from his school which stated that he completed Class 9, as he is unable to explain why the letter says that, and that “he just forwarded the documents over to his previous Counsel without examining the documents properly;” however, he does not explain why his prior statements in the record stated that the letter from the school was accurate and concurred with the information he provided to the Family Court. The Petitioner also submits photographs which he contends are “age progression” but we note that these photographs are undated, and we are unable

to determine the amount of time that has passed in them. He also resubmits copies of his vaccination card, which was considered in our prior decision where we determined that 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. As such, we determine that the Petitioner has not established, by a preponderance of the evidence, that he was under the age of 21 at the time he filed his SIJ petition.

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.