



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

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

In Re: 27803376

Date: SEP. 28, 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 a subsequent appeal, concluding that the Petitioner did not establish that he was under the age of 21 at the time of filing the SIJ petition and that he warranted the consent of U.S. Citizenship and Immigration Services (USCIS). The matter is now before us on combined motions to reopen and reconsider. 8 C.F.R. § 103.5. 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.

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.

To be eligible for SIJ classification, petitioners must show, *inter alia*, 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 parental 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), (c)(1)¹; *see also* 8 C.F.R. § 103.2(b)(1) (providing that a petitioner must establish their eligibility for the benefit sought at the time of filing the benefit). Petitioners bear the burden of proof to show their eligibility for SIJ classification by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

The Petitioner, whose claimed date of birth is [] 1998, entered the United States on or about March 8, 2016. As stated in our prior decision, incorporated here by reference, in April 2017, the Family Court of the State of New York, County [] (Family Court), appointed custody of the Petitioner to M-A-² and provided findings relevant to the Petitioner's SIJ eligibility. Based on the Family Court order, the Petitioner filed his SIJ petition in May 2017. The Director determined that the record contained evidence that, during previous immigration encounters, the Petitioner used a different date of birth—[] 1994—which materially conflicts with his claimed date of birth. Following a notice of intent to deny (NOID), the Director concluded that the Petitioner did not establish that [] 1998, is his true date of birth and denied the SIJ petition because the 1994 date of birth would have made the Petitioner over 21-years-old when the SIJ petition was filed, and therefore render him ineligible for SIJ classification. We subsequently dismissed the Petitioner's appeal on the same basis and the instant combined motions followed. On motion, the Petitioner submits a brief and new supporting documents.

In our previous decision, we acknowledged and carefully considered all the documents the Petitioner submitted in order to show that he was in fact born on his claimed date of birth, [] 1998. These supporting documents included, inter alia, three different birth certificates, school-related documents, affidavits from individuals regarding his age and documentation, an immunization and vaccination card, age progression photographs, and results from a dental and wrist x-ray exam. However, we determined that the documentary evidence before us did not establish the Petitioner's claimed date of birth, in part because the first and second birth certificates presented showed that his birth was registered in February 2016, more than 17 years after his claimed birth date and while he was in transit to the United States; because the third birth certificate presented showed that his birth was registered in [] 1998 and the certificate issued in February 2003, but the Chairman's statement further added inconsistencies to the record; and because his explanations did not reasonably resolve U.S. government records indicating that he used the 1994 date of birth during at least one immigration encounter while en route to the United States.

On his motion to reconsider, the Petitioner broadly asserts that we improperly considered the documentary evidence he submitted in support of his claimed date of birth, which shows, by a preponderance of the evidence, that he was under 21-years-old at the time of filing the SIJ petition. However, apart from these general assertions, he does not clearly identify any incorrect application of law or policy in our previous decision or specify how we erred based on the evidence before us at the time of our decision. 8 C.F.R. § 103.5(a)(3). The record reflects that we have fully considered the arguments and evidence before us on appeal. The Petitioner does not allege any other error in our previous decision that would warrant reconsideration.

On his motion to reopen, his arguments and new documentary evidence still do not establish [] 1998, as his true date of birth. He submits a letter from two Chairmen, S-A-L- and N-H-M-, a letter from two Secretaries, S-U- and N-I-, a birth registration record, a letter from his sister, and a letter from his guardian. In his letter, one Chairman, S-A-L-, seeks to clarify his previous statements submitted on appeal, pertaining to the third birth certificate in the record. He recalls that in his previous statement, he indicated that the Petitioner's "birth certificate on [] 1998] was recorded in the book determined for the birth registration of the [g]overnment of Bangladesh." He

² We use initials to protect the privacy of individuals.

explains that in 1998, the birth registration of all children was recorded in the registrar's book and the Petitioner's registration information number is [] on the basis of which his birth certificate was issued after the government of Bangladesh enacted the new law in 2004. He clarifies that his statement about the Bangladesh government's lack of collection of birth registration of people in the form of any record in the beginning meant that parents kept the birth certificates of their children after each birth since the establishment of Bangladesh in 1971 as there was no birth registration system at that time. The birth registration record submitted lists numerous registered persons, one of which is the Petitioner, showing his date of registration as "2/02/2016," a registration number of [] and a date of birth of [] 1998. In his letter, another Chairman, N-H-M-, explains that the Petitioner's birth certificate was registered online and issued on February 17, 2016 and when the Petitioner's brother "later"³ collected another birth certificate on his behalf, a different Secretary was in the office and signed for it, but used the old date of February 17, 2016 since that was the date the birth certificate had been registered online. He further explains that, according to the birth certificate rules, the signature of the Secretary and the Chairman has to be provided on the day the certificate is issued, and they use the old date of February 17, 2016 as it is registered. The letters from the two Secretaries combined clarify the reasons for the different signatures on the first two birth certificates presented with the same registration and issue dates. In his letter, S-U- explains that he was the duty Secretary since 2010, but was on leave from February 20, 2016 to May 10, 2016. In a separate letter, N-I- explains that he was the temporary duty Secretary from February 21, 2016 to May 11, 2016, in place for S-U- during his absence, when the Petitioner's brother went to collect the Petitioner's birth certificate. He explains that as the Petitioner's birth certificate was registered online, he signed the document per the previous date of February 17, 2016.

The letter from the Petitioner's sister explains that around the end of January 2014, she contacted an "agent" to smuggle the Petitioner out of Bangladesh. She indicates that the agent advised her it would be a problem if the Petitioner was under the age of 18, but she responded to the agent to get her brother out of Bangladesh at any cost, to which the agent responded that they would have to do whatever he said. She recalls that the agent asked for the Petitioner's birth registration number, which she provided him, and indicated that he would change the Petitioner's age. She mentions that agents have many people who can change a person's age and the Petitioner did not face any problems when he went to the passport office. Finally, she asserts that the Petitioner was born on [] 1998, she was present at his birth, she is aware of his age, and he grew up before her eyes.

The letter from the Petitioner's guardian explains that, when the Petitioner was preparing his asylum application, he took the Petitioner to his lawyer's office, but they did not have a Bengali interpreter. He indicates that the Petitioner advised the staff he "can speak and understand a little bit" of English, so they took him to a different room and collected information from him. He states that, although he wanted to be present when the information was collected, as he also knew a little English, the staff would not allow him into the room and also did not provide a copy of the asylum application. He contends that the lawyer's office collected incorrect education information from the Petitioner due to his inability to fully understand English. He further asserts that the education timeline in the asylum application was incorrect to the best of his knowledge.

³ The Chairman's letter does not indicate how much "later" the Petitioner's brother obtained another copy of the birth certificate. However, based on the new evidence on motion, it is presumed that the Petitioner's brother obtained the second birth certificate between February 21, 2016 and May 11, 2016 when N-I- was the temporary duty Secretary and signed the certificate as such.

As previously noted, the burden of proof is on the Petitioner to establish, by a preponderance of the evidence, that his true date of birth is [] 1998, which would have made him under the age of 21 at the time of filing his SIJ petition.

First, the letter from Chairman S-A-L- does not clarify his previous statements as intended. Rather, although S-A-L- claims that the Petitioner's birth, registered on [] 1998, was recorded in the book designated for the birth registration of the government of Bangladesh under registration number [] the recording in the birth registration record shows a registration date of "2/02/2016," and there is no record that the birth was registered in [] 1998 or the certificate issued in February 2003, as the third birth certificate shows.

Second, the letters from Chairman N-H-M- and both Secretaries raise further concerns about the validity of the first two birth certificates in the record. They explain that the first birth certificate was registered and issued on February 17, 2016, but the second birth certificate later obtained by the Petitioner's brother, presumably between February 21, 2016 and May 11, 2016 when N-I- was the temporary duty Secretary and signed the certificate as such, was also back dated to February 17, 2016 "because the birth certificate was registered online on [that date]." They also reference "birth certificate rules" indicating that the Secretary and Chairman's signatures have to be provided on the day the certificate is issued and they use the date it is registered. Here, the Petitioner does not provide any evidence of the "birth certificate rules" referenced by the Chairman or of the guidelines used in listing the issue date on birth certificates when the document is issued after the date of registration.

Third, while the Petitioner's sister reiterates that the "agent" was the one who insisted that the Petitioner use a fraudulent date of birth and also helped him obtain the passport he used to travel to the United States, the Petitioner still has not provided detailed and probative evidence to support these claims.

Finally, we acknowledge that language barriers can sometimes cause a miscommunication between an applicant and a preparer, as the Petitioner's guardian indicates was the case when completing the Petitioner's asylum application. However, the Petitioner has not provided any probative evidence to show that the education information on the asylum application is incorrect, such that he can overcome the discrepancy with the primary school headmaster's statement and high school payment receipts in the record. As the Petitioner has not overcome our prior determination, he has not demonstrated that reopening is warranted.

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 motions 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.