



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

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

In Re: 25198731

Date: DEC. 20, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for 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, 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not demonstrate he merits U.S. Citizenship and Immigration Services' (USCIS) consent to SIJ classification. We summarily dismissed a subsequent appeal pursuant to the regulations at 8 C.F.R. § 103.3(a)(1)(v), because the Petitioner did not specifically identify any erroneous conclusion of law or statement of fact in the Director's decision and, although he indicated that he would submit a brief and/or additional evidence to our office within 30 days he did not do so.

The matter is now before us on a combined motion to reopen and reconsider. The Petitioner submits an appeal brief and requests that we accept it as timely filed. In the alternative he asks us to reopen the proceedings sua sponte and adjudicate his appeal on the merits.

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, in turn must establish that our decision was based on an incorrect application of the law or USCIS policy and that the decision was incorrect based on the evidence in the record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A review of any motion is limited to the basis for the prior adverse decision. Accordingly, we examine new facts and arguments to the extent that they pertain to our summary dismissal of the Petitioner's appeal.

Counsel for the Petitioner asserts that the summary dismissal of the appeal was improper because he timely submitted a supporting memorandum to the Director of the National Benefits Center. However, statements or assertions by counsel are not evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). The Petitioner does not submit documents to corroborate counsel's statement. Moreover, the Form I-290B, Notice of Appeal or Motion instructions specifically provide that "[a]ny brief and/or evidence submitted after [filing] Form

I-290B must be sent directly to the AAO, even if the appeal has not yet been transferred to the AAO. For the AAO's mailing address, visit www.uscis.gov/aao." See *Instructions for Form I-290B*, page 6, <https://www.uscis.gov/i-290b>; 8 C.F.R. § 103.3(a)(2)(viii) (providing that the affected party shall submit the brief directly to the [AAO]). Regardless, the record of proceedings does not include a memorandum or evidence in support of the appeal, and there is nothing in the corresponding USCIS electronic records to indicate that we received any correspondence from the Petitioner before summarily dismissing his appeal. Consequently, we have no basis for reopening of that decision.

We will also dismiss the Petitioner's motion to reconsider because he has not shown that the summary dismissal of his appeal was incorrect based on the evidence of record at the time. Specifically, the Petitioner has not established that after filing the appeal he submitted a brief and/or additional evidence to our office, as required or that we otherwise erred as a matter of law or USCIS policy by summarily dismissing his appeal on that basis.

Lastly, we decline to reopen the matter sua sponte. Although pursuant to the regulations at 8 C.F.R. § 103.5(a)(5)(i) we may reopen a proceedings on our own motion under certain circumstances, the sua sponte authority is not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations. See *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). Here, the Petitioner did not timely submit an appeal brief to our office as instructed. As a result, we were unable to address the merits of his SIJ petition and summarily dismissed his appeal. We acknowledge the Petitioner's claim that he is eligible for SIJ classification and that the Director's adverse determination was in error; however, as he has not overcome the grounds for the summary dismissal of his appeal, we decline to exercise our sua sponte authority to consider the substance of this claim.

In conclusion, the Petitioner has not established that after filing his appeal he properly submitted an appellate brief and/or additional evidence to our office within 30 days, or that he otherwise identified any legal or factual errors in the Director's denial of his SIJ petition. The Applicant therefore has not established that our prior decision was incorrect as a matter of law or USCIS policy, or that there are new facts or evidence that would warrant reopening of these proceedings. Finally, the Petitioner has not established circumstances sufficient for us to reopen the matter sua sponte and adjudicate his appeal on the merits. Consequently, his appeal remains summarily dismissed, and his SIJ petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.