



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

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

In Re: 12516298

Date: DEC. 22, 2022

Appeal of National Benefits Center 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 (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center denied the SIJ petition and the matter is now before us on appeal. 8 C.F.R. § 103.3. 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed them in the custody of a state agency 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 petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (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

A. Relevant Facts and Procedural History

In [] 2017, the [] Family Court in New York issued an order appointing a guardian for the Petitioner in proceedings brought under section 661 of the New York Family Court Act and section 1707 of the New York Surrogate's Court Procedure Act. The order stated that "the appointment shall last until the [Petitioner's] 21st birthday, since [he] is over 18 and has consented to the appointment until he . . . reaches the age of 21" In a separate SIJ order issued in [] 2018, the Family Court indicated that the Petitioner's date of birth was [] 1999. The Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner is a "juvenile under the age of 21," and "dependent on the juvenile court in that the court has taken jurisdiction over his . . . guardianship proceeding" under the New York Family Court Act. Additionally, the Family Court found that the Petitioner's reunification with his parents was not viable due to neglect and abandonment under New York law and that it would not be in his best interest to be returned to Bangladesh, his country of nationality.

Based on the Family Court's orders, the Petitioner filed his SIJ petition in February 2018. In his SIJ petition, he indicated that his date of birth is [] 1998. As evidence to establish his date of birth, he submitted a copy of a birth certificate issued in Bangladesh in March 2015. The Director issued a request for evidence, informing the Petitioner that his birth certificate conflicted with USCIS records regarding his date of birth and requesting that he submit secondary evidence of his age. In response, the Petitioner provided copies of medical and school records; a police clearance certificate; a letter from a registrar in Bangladesh explaining why his birth was registered years after the fact; his Bangladeshi passport bearing number [] valid from August 2017 to August 2022 (2017 passport); a copy of his birth certificate differing in format and content from the previously submitted birth certificate; affidavits from two nurses who claimed to have attended his birth; a printout of the Bangladesh Birth Registration Information System (BRIS) website showing that his birth certificate was registered; and an *Order to Show Cause to Correct SIJ Order* requesting that the Family Court correct, in relevant part, a typographical error in the SIJ order which had incorrectly indicated that his date of birth was [] 1999.

The Director denied the SIJ petition based on a determination that the evidence was insufficient to establish the Petitioner's age. On appeal, he argues that he has submitted enough evidence to establish his date of birth. In support of his argument, he submits a vaccination record, dental records, an explanation of how a dental examination can provide proof of a person's age, and copies of previously submitted evidence. The Petitioner also filed a Form I-485, Application to Register Permanent Residence or Adjust Status, in September 2020, in support of which he provided a copy of his Bangladeshi passport bearing number [] valid from May 2020 to May 2025 (2020 passport), a copy of his birth certificate, and copies of the Family Court's orders.

During our adjudication on appeal, we issued a notice of intent to dismiss (NOID) to inform the Petitioner that USCIS conducted an overseas investigation to verify the documents he submitted to establish his date of birth. The Deputy Director of the Department of Immigration and Passport Office in Dhaka, Bangladesh (Deputy Director), informed USCIS investigators that the Petitioner's 2017 and 2020 passports, numbered [] and [] both of which indicate that his date of birth is []

1998, were issued after he submitted an altered birth certificate bearing that date of birth. The Deputy Director stated that the Petitioner had previously held another passport, issued in 2014, which listed his date of birth as [] 1991 and was based on a birth certificate he had provided. Information from Bangladeshi government officials showed that the Petitioner altered his birth certificate to incorrectly indicate that his date of birth was [] 1998, and obtained two passports based on that incorrect date of birth. USCIS investigators therefore determined, based on verification from Bangladeshi officials, that the Petitioner's true date of birth is [] 1991. Accordingly, we notified the Petitioner that the evidence shows that he was 26 years old when he filed his SIJ petition. Therefore, he does not meet the eligibility requirements for SIJ classification and USCIS' consent is not warranted. The Petitioner responds to the NOID with a brief and additional evidence.

B. The Petitioner was Not Under 21 Years of Age at the Time of Filing

The Petitioner has not met his burden of establishing by a preponderance of the evidence that he was under 21 years old at the time of filing his petition with USCIS, as 8 C.F.R. § 204.11(b)(1) requires. Although the regulation allows a petitioner to submit secondary evidence of age, such evidence must establish the petitioner's age in USCIS' discretion. 8 C.F.R. § 204.11(d)(2). In light of information from Bangladeshi government officials that he altered his birth certificate and obtained two passports bearing a false date of birth and that his true date of birth is [] 1991, rather than [] 1998, the evidence the Petitioner has submitted regarding his age is insufficient.

In response to our NOID, the Petitioner submits a copy of the identification page of a Bangladeshi passport valid from July 2014 until July 2019 (2014 passport), bearing number [] his name, and a date of birth of [] 1991. Counsel notes that the Petitioner was smuggled into the United States and that this process "routinely involves the creation and/or usage of a fictitious date of birth" on a false passport in order to avoid detention in other countries as an unaccompanied minor. Counsel states that smugglers often instruct children to sign documents without allowing them to first read the contents, and may require children to provide biometrics without supervision by a familiar adult. Counsel therefore refers to the 2014 passport as a "smuggler-created fictitious passport." However, the Petitioner himself does not state that this occurred in his case, and assertions of counsel do not constitute 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)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Furthermore, counsel does not clarify how passport officials in Dhaka would have an official record of a "smuggler-created fictitious passport," or why a smuggler would create such a passport in 2014 when the Petitioner did not travel to the United States until 2016.¹

The Petitioner also argues that we did not provide details about how the overseas investigation was conducted, including the identity of the official involved, what questions were asked, whether the investigators were impartial or sought only to confirm the reasons for the Director's denial of the SIJ petition, and whether the investigators and Bengali officials were able to communicate in the same language. As we noted in our NOID, USCIS investigators spoke with the Deputy Director of the Department of Immigration and Passport Office in Dhaka, Bangladesh. There is no evidence to support a determination that the USCIS investigators were biased or conducted their investigation improperly.

¹ The record reflects that the Petitioner was apprehended upon his entry into the United States in [] 2016.

Additionally, the Petitioner claims that we did not properly confront him with the 2014 passport because he has provided the copy of that document to us, but we did notify the Petitioner of the existence of the 2014 passport in our NOID and gave him a chance to respond. 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 Obaighena*, 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.”). As stated, the Petitioner bears the burden of proof to demonstrate his eligibility for SIJ classification by a preponderance of the evidence, and he has not done so here.

Also, the Petitioner states that the 2014 passport was issued in Dhaka, Bangladesh, but is stamped by an official in his town of birth, [REDACTED] and that it is unclear whether officials in Dhaka would have information about a passport stamped in [REDACTED]. However, the other two passports the Petitioner previously submitted, which he claims do bear his correct date of birth, were also stamped by officials in locations other than the issuing authority. The 2017 passport lists the issuing authority as Dhaka but is stamped by an official in [REDACTED] and the 2020 passport lists the issuing authority as Dhaka but is stamped by the First Secretary (Passport & Visa Wing), Consulate General of Bangladesh, New York. The Petitioner has not provided an explanation or evidence to support a determination that a stamp from a location other than the issuing authority reflects upon the authenticity of a passport or indicates that the original issuing authority would lack information about it. Also, he claims the 2014 passport was the “first passport created bearing [his] name” and therefore would appear in any inquiry relating to his passports, but the “Bengali ‘official’ would not have made this distinction and would not have disclosed that the first passport was made at the hand of smugglers.”² But the Deputy Director at the passport office in Dhaka did distinguish between verified and fraudulent passports, as he informed investigators that the 2017 and 2020 passports were based on an altered birth certificate while the 2014 passport was based on the Petitioner’s true date of birth.

The Petitioner further notes that the identification number on the 2014 passport does not result in any record on the BRIS website. However, he does not provide evidence that information on the BRIS website is determinative of whether a record of birth was issued based on fraudulent or altered documents. The Petitioner’s birth registration number on his 1998 birth certificate does appear as verified on the BRIS website, but the investigation concluded that date of birth is false and the birth certificate was altered. So

² It is not clear from the Petitioner’s brief whether he alleges that the 2014 passport was physically created by smugglers and is a fake document which somehow became part of official government records, or is an authentic document created through official channels but was issued based on false information provided by smugglers.

the information that appears on the BRIS website does not conclusively demonstrate whether a document is authentic and is not sufficient to overcome the results of the overseas investigation.

As further support for his claim that he was born in 1998, the Petitioner submits a letter from his sister, M-A-,³ who states that she was born in [] 1991 and that the Petitioner is her younger brother. She claims she was an elementary school student when the Petitioner was born, and recalls events from her childhood that occurred prior to the Petitioner's birth. The Petitioner provides M-A-'s birth certificate and national identification card, which list her date of birth as [] 1991, and a copy of the BRIS website showing that the registration of her birth is verified there. Although we acknowledge M-A-'s letter and the documents related to her birth, the age and identity of the Petitioner's sister are not at issue in this case and this information is insufficient to overcome the results of the overseas investigation which were based on a direct inquiry with an official of the passport office in Bangladesh. The Petitioner also notes that the 17-digit birth registration number (BRN) on M-A-'s birth certificate differs by only the final digit from the BRN on the Petitioner's 2014 passport. He alleges that the last six digits of the 17-digit BRNs should be random, and that it is highly unlikely that a randomly generated BRN for the Petitioner would be only one digit different than that of his sister. However, he does not explain the significance of this claim in relation to his assertion that his 2014 passport was fraudulently created.

The Petitioner also submits a copy of his brother's Form I-589, Application for Asylum and for Withholding of Removal (asylum application), which lists the Petitioner as a sibling. Counsel claims that the asylum application was prepared in 2018 with "no anticipation or expectation of either the I-360, its denial or the instant NOID response." However, the asylum application bears a stamp indicating receipt by the U.S. Department of Justice on March 27, 2019, after the Petitioner filed his SIJ petition in February 2018. And contrary to counsel's claim that the asylum application confirms the Petitioner's date of birth as [] 1998 and that M-A- is his sister, it does not provide his date of birth or list a person by the name of M-A- as one of the siblings.⁴

Further, he contends that we ignored scientific evidence of his age in the form of a dentist's report stating that he was 21 to 22 years old at the time of the exam. We acknowledged the dental exam in our NOID and recognize that a licensed American dentist issued it. The dental exam is one piece of evidence among many that we have considered, but it is not enough to overcome the overseas investigation results in which an official of the passport office in Bangladesh confirmed that the Petitioner falsified his birth certificate and obtained passports based on that information. The Petitioner also asserts that the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR) has procedures for verifying the age of a person in its care when there is reason to question it, and that we should rely on the fact that ORR treated him as an unaccompanied minor. He cites an unpublished case from the U.S. District Court in Washington, which refers to steps ORR may take "on a reasonable suspicion that a child in HHS custody is 18 years or older." *B.I.C. v. Asher*, No. C16-132-MJP-JPD, 2016 WL 8672760, at *2 (W.D. Wash. Feb. 19, 2016) (citing ORR Guide on Children Entering the United States Unaccompanied). However, neither the unpublished decision of the U.S. District Court in Washington nor ORR's internal procedures is binding on us. Also, the record does not show that ORR took any extra steps to

³ We use initials to protect identities.

⁴ The list of the asylum applicant's parents and siblings appears at Part A.III, question 5, of the asylum application. The Petitioner's name and location of birth appears there, but there is no space to provide his date of birth. The other siblings listed are those with initials N-B-, M-R-, and M-B-, and an attached Supplement B, Form I-598 lists one more sibling with the initials M-R-.

verify the Petitioner's date of birth, had any information aside from what the Petitioner provided that might alert ORR that age verification was necessary, or was aware of the information we obtained in our overseas investigation.

The Petitioner also claims that pursuant to the doctrine of unclean hands, denying him relief based on "alleged misrepresentations about his age made before he reached the U.S. border is already barred from being raised in a later federal court proceedings under a Federal Habeas Corpus proceeding" He cites *Lonchar v. Thomas*, 517 U.S. 314 (1996), in which the U.S. Supreme Court held that a Federal Court of Appeals cannot dismiss a Federal Habeas Corpus petition "for special ad hoc 'equitable' reasons not encompassed within the relevant statutes, the Federal Habeas Corpus Rules, or prior precedents." 517 U.S. at 315. The matter before us is not a Federal Habeas Corpus proceeding. The issue on appeal is whether the Petitioner meets the statutory requirement that he was under the age of 21 years at the time he filed his SIJ petition. We must determine if he has met his burden of showing by a preponderance of the evidence that he meets the statutory requirement, and we lack authority to waive the requirement of the statute as implemented by the regulation. See e.g., *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). Because he has not provided consistent, credible, and verifiable documentation of his birth, we cannot conclude that he meets the age requirement.

Finally, the Petitioner alleges that because our records do not otherwise reflect the Petitioner's date of birth as [redacted] 1991, "upon which [he] would have traveled to the US," we should not rely on it. However, our records show that the Petitioner had no identification documentation with him when he was apprehended upon entry into the United States, so he did not travel to this country under that date of birth and officials could not have generated records based on it at the time of his entry. 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 also indicates that our records contain other birth dates for him which cast doubt on our determination. He notes that the Director previously referenced a record listing his date of birth as [redacted] 1996, and that the results of his Freedom of Information Act request contained a document stating he was born on [redacted] 1950. He states that if USCIS views the 1950 birth date as "impossible," we should consider the [redacted] 1991 date of birth "in the same light" because USCIS and ORR records show that he was treated as an unaccompanied minor. Our records indicate that the Petitioner provided his date of birth as [redacted] 1996 during an encounter with Mexican officials in [redacted] 2016, and that Mexican officials once recorded his date of birth as [redacted] 1950. We agree with the Petitioner that a 1950 date of birth does not relate to him, as photographs of the Petitioner clearly show that he is not over 70 years old and there is no other evidence in the record to suggest that he was born in 1950. We do not dismiss the Petitioner's SIJ petition based on either the 1996 or 1950 dates of birth that appeared in Mexican records. However, while the Petitioner claims that the 2014 passport listing his date of birth as [redacted] 1991 was created to avoid apprehension as an unaccompanied minor while traveling through other countries, the record does not show that he provided that date of birth to foreign officials during his journey.

Our overseas investigation revealed that the Petitioner's identification documents that show he was born in 1998 were based on an altered birth certificate and that his true date of birth is [redacted] 1991. The evidence and arguments the Petitioner has provided below and in response to our NOID are insufficient to overcome this determination. Furthermore, the Petitioner has not explained why he did not have any identity documentation upon apprehension but later obtained such documentation, showing his date of

birth as 1998 and bearing authentication stamps dated after his entry into the United States. And he has not addressed why he submitted two copies of a 1998 birth certificate which differ in format and content, which is an issue we raised in our NOID. Although both birth certificates indicate that his date of birth is [] 1998 and indicate that they were issued on the same date, one bears register number 13 while the other bears register number 14. The two documents also contain other differences, such as the level of detail about his place of birth, and one lists a permanent address while the other does not. He has not explained these discrepancies, and his arguments and evidence purporting to explain his 2014 passport and related birth certificate as fictitious documents are not sufficient to overcome the results of our overseas investigation. Accordingly, 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.

C. USCIS' Consent is Not Warranted

Furthermore, the Petitioner has not established that USCIS' consent to his SIJ classification is warranted. SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. For USCIS to consent, the request for SIJ classification must be bona fide, which requires the petitioner to establish that a primary reason for seeking the juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. 8 C.F.R. § 204.11(b)(5). USCIS may 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. *Id.* In this case, the Family Court indicated in its guardianship and SIJ orders that the Petitioner was under the age of 21 years, and the record does not establish that the Family Court was aware of the Petitioner's true date of birth. The evidence obtained during the overseas investigation shows that the Petitioner was 25 years old when the Family Court appointed a guardian for him with the express intention that the guardianship remain in place until he reached the age of 21, and he was 26 years old when the court issued its SIJ order based on a finding that he was a juvenile under the age of 21. The evidence of the Petitioner's true age materially conflicts with the Family Court's determinations, and he has not shown by a preponderance of the evidence that his request for SIJ classification is bona fide, as required under 8 C.F.R. § 204.11(b)(5).

III. CONCLUSION

The Petitioner has not met his burden of establishing by a preponderance of the evidence that he was under 21 years of age when he filed his SIJ petition and that USCIS' consent is warranted. Accordingly, he is not eligible for SIJ classification.

ORDER: The appeal is dismissed.