



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

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

In Re: 20456113

Date: OCT 25, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of India, 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 (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). The Petitioner then appealed this decision to us and we summarily dismissed the appeal. The matter is now before us on a combined motion to reopen and reconsider. 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 decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The burden of proof is on the petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

The record indicates that the Petitioner entered the United States without admission or parole in November 2006, when he was 16 years old. In [redacted] 2017, when the Petitioner was 17 years old, the Court of Common Pleas of [redacted] Pennsylvania (court) issued a *Temporary Custody Order* (custody order) granting custody of the Petitioner to a family friend, K-S-¹. Based on the custody order, the Petitioner filed this SIJ petition in October 2017. In January 2021, the Director denied the application, concluding that the custody order lacked a qualifying parental reunification determination, as required for SIJ classification under section 101(a)(27)(J) of the Act, and consequently USCIS' consent was not warranted.

In July 2021, we summarily dismissed the Petitioner's appeal because "it did not identify specifically any erroneous conclusion of law or statement of act in the unfavorable decision," as required. 8 C.F.R. § 103.3(a)(1)(v). In our decision, incorporated here by reference, we also advised the Petitioner that, although he indicated on his Form I-290B, Notice of Appeal or Motion (Form I-290B), that he would

¹ Initials are used to protect the individual's privacy.

submit a brief and additional evidence within 30 days, we had not received either. The Petitioner now files a motion to reopen and reconsider our summary dismissal.

On motion, the Petitioner contends that the denial of his SIJ petition “as abandoned [wa]s wrong and unsupported by the evidence.” He maintains that his brief was mailed to and received by USCIS’ Chicago Lockbox and thus, there was no reason for us to dismiss his SIJ petition on the ground that he did not file his brief. In support of his contentions, the Petitioner submits copies of a certified mail receipt and delivery confirmation from the U.S. Postal Service indicating that an envelope with a matching tracking number was sent by his counsel to USCIS’ Chicago Lockbox on June 3, 2021 and received there on June 8, 2021.

Although the Petitioner has provided evidence that he attempted to file his brief in support of the appeal, the documentation submitted on motion indicates that he did not send the brief directly to the AAO’s mailing address. The instructions for the Form I-290B provide the following mailing instructions for petitioners who file a brief within 30 days of filing an appeal: “Any brief and/or evidence submitted after you file 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.” Form I-290B, Instructions for Notice of Appeal or Motion, <https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf> (Dec. 2019 ed.), at 6 (Form I-290B Instructions); *see also* 8 C.F.R. § 103.2(a)(1) (providing that “[e]very form, benefit request, or other document must be submitted ... and executed in accordance with the form instructions” and that a “form’s instructions are . . . incorporated into the regulations requiring its submission”). Moreover, the Petitioner indicated on the Form I-290B that a brief and additional evidence would be filed within 30 days of filing the appeal in March 2021. Absent evidence demonstrating that he followed these instructions and mailed his brief to the correct mailing address, the Petitioner has not provided new facts or new evidence that would overcome our decision to summarily dismiss his appeal. Accordingly, the motion to reopen will be dismissed.

We will also dismiss the Petitioner’s motion to reconsider because he has not demonstrated that the summary dismissal of his appeal was incorrect based on the evidence of record at the time of the initial decision. Specifically, he does not claim that our summary dismissal decision was based on an incorrect application of law or policy. For the reasons discussed, our summary dismissal decision was consistent with USCIS policy and the regulation at 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner has not satisfied the requirements for a motion to reopen or a motion to reconsider. Accordingly, we will dismiss both motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.