



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

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

In Re: 17791294

Date: AUG. 22, 2023

Appeal of National Benefits Center 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) 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 petition, concluding that the record did not establish that he was under 21 years of age at the time he filed his petition. 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

On [] 2019, the [] Family Court in New York issued an order appointing a guardian for the Petitioner. The order stated that “the appointment shall last until [his] 21st birthday, since [he is] over 18 and has consented to the appointment until [he] reaches the age of 21” In a separate order issued on the same day (SIJ order), the Family Court indicated that his date of birth was [] 2000. The Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that he was a “juvenile under the age of 21,” and “dependent on the juvenile court in that the court has taken jurisdiction over his guardianship proceeding” pursuant to the New York Family Court Act. Additionally, the Family Court found that his reunification with his parents was not viable due to the death of his father, which is a form of 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 Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant (SIJ petition) on July 29, 2019. In his SIJ petition, the Petitioner indicated that his date of birth is [] 2000. As evidence to establish his date of birth, he submitted a copy of a birth certificate issued in Bangladesh in April 2018. The Director issued a request for evidence in April 2020, informing him 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 his birth certificate and an affidavit from the [] [] dental documentation obtained on arrival in the United States, school documents, a signed personal affidavit, a copy of his passport from Bangladesh bearing number [] valid from July 2017 until July 2022, age progression pictures, affidavits from friends and family members, and a copy of a medical certificate from the [] dated September 20, 2000.

The Director denied the SIJ petition and determined that the evidence the Petitioner submitted was insufficient to establish his age. The Director also noted that the medical certificate from the [] [] which bears a date prior to his indicated date of birth, stated that he was admitted to the hospital on September 18, 2000, with a fever, cold, and cough. On appeal, he contends that he has submitted sufficient evidence to establish his date of birth. With his appeal, he submits a brief, which argues that he has established that his birth date is [] 2000, and that the medical certificate is “immaterial and irrelevant” to his eligibility for SIJ status.

During the adjudication of the Petitioner’s appeal, 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 initial passport, numbered [] was obtained by providing a birth certificate that stated his date of birth was [] 1997, and that he obtained his subsequent passport, bearing number [] later, based on the same birth record that was

retained by the passport office. The Deputy Director further provided a copy of a birth certificate, issued in 2008, which indicates that the Petitioner's actual date of birth is [REDACTED] 1997. This information was verified in the Bangladesh Office of the Registrar General, Birth and Death Registration, which indicates that his birth was registered in August 2007 in the [REDACTED] [REDACTED] with a date of birth of [REDACTED] 1997. Information from Bangladeshi government officials showed that he altered his birth certificate to incorrectly indicate that his date of birth was [REDACTED] 2000, and obtained a passport based on that incorrect date of birth. USCIS investigators therefore determined, based on verification from Bangladeshi officials, that his true date of birth is [REDACTED] 1997. Accordingly, we issued a notice of intent to dismiss (NOID) notifying the Petitioner that the evidence shows that he was 22 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 a passport bearing a false date of birth, and that his true date of birth is [REDACTED] 1997, rather than [REDACTED] 2000, the evidence he has submitted regarding his age is insufficient.

In response to our NOID, the Petitioner contends that we ignored scientific evidence of his age in the form of a dentist's report that stated that he was "18 years or older, but under 21 years" at the time of the exam in August 2020. 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 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 continues to contend that the medical certificate from the [REDACTED] which both the Director's decision and our NOID discussed, was irrelevant as argued in his appeal brief because he "would have been eighteen on [REDACTED] 2019[,] regardless of whether was born in [REDACTED] 2000 or [REDACTED] 2000." However, neither USCIS notice indicated that the certificate from [REDACTED] [REDACTED] stated that the Petitioner was born in [REDACTED] 2000, rather, the certificate indicated that the

Petitioner was admitted to the hospital with a fever, cough, and cold in September 2000, but does not indicate a date of birth. The Petitioner additionally asserts that the irrelevance is “bolstered by the illegitimacy of the document” and states that the document also lists his father as “late” when his father did not pass away until January 2014. He states that USCIS “should have known that the document does not contain any true information,” and contends that he had to rely on his brother to obtain secondary evidence, and neither he nor his brother are fluent in English, and we should excuse his submission of illegitimate documentation. The Petitioner does not provide a sufficient explanation as to why he submitted documents he now admits were falsified.

In relation to the passport that the Petitioner claims was created by a smuggler, the Petitioner contends that as that passport only lists a Bangladeshi Birth Registration Information System (BRIS) number that is 16 digits in length, that further supports his claim that the information used by the smugglers did not contain his true date of birth. 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 2000 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, and further returned a separate birth certificate indicating that his date of birth is [REDACTED] 1997. As such, 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 we have noted, the Bangladeshi officials included a copy of the Petitioner’s actual birth certificate, as well as a BRIS number that is the appropriate 17 digits in length and returns a result relating to the Petitioner. The Petitioner contends that we have not presented the 1997 birth certificate that we obtained; however, 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 Obaigbena*, 19 I&N Dec. at 536 (BIA 1988) (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.”). In our NOID, we appropriately notified the Petitioner of the results of the overseas investigation, and the existence of the 1997 birth certificate. 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.

Finally, the Petitioner asserts that we are collaterally estopped, or precluded, from determining that he has a date of birth different from [REDACTED] 1998, because the Department of Homeland Security (DHS) and ORR had previously accepted this as his date of birth. However, we disagree. *See Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 290 (5th Cir. 2005) (providing three requirements for issue

preclusion to apply: “(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision.”). 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] 2000. The Petitioner provided his date of birth to DHS and ORR verbally as he did not have a passport or other identifying documents, and those entities did not adjudicate or litigate the question of his date of birth. Each of the copies of the documents provided by the Petitioner from his time in ORR custody relate to his initial verbal claim of his date of birth being [REDACTED] 2000. As such, the issue has not been previously adjudicated or actually litigated and this legal doctrine does not apply to our determinations regarding the Petitioner’s age. Furthermore, each application for an immigration benefit filed with USCIS constitutes a separate proceeding, and we are not bound by a factual determination from another office. 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.

Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding whether USCIS’ consent is warranted. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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. Accordingly, he is not eligible for SIJ classification.

ORDER: The appeal is dismissed.