



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

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

In Re: 27591506

Date: AUG. 25, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner, a native and citizen of Bangladesh, 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 Petitioner did not establish eligibility for SIJ classification, and we dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider. 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our prior decision on appeal, which is incorporated here by reference, we determined that the Petitioner did not submit sufficient evidence of his age to show that he was under the age of 21 at the time of filing and USCIS' consent was warranted. We noted inconsistencies between evidence, including various passports, as to the Petitioner's date of birth. We issued a notice of intent to dismiss to inform the Petitioner of the results of an overseas investigation that determined his true date of birth was [redacted] 1991, and that the Petitioner's passports issued in 2017 and 2020, which indicated his date of birth was [redacted] 1998, were issued based on altered birth certificates and were not authentic. On motion, the Petitioner submits multiple affidavits in support of his SIJ petition, copies of two birth certificates, a copy of a purportedly fake passport listing an issuance date in 2014, a report of a flood in 1998 in Bangladesh, and articles on premature birth. The Petitioner asserts that these new facts establish eligibility, as they tend to prove his correct birth date was in 1998, thus establishing he filed his SIJ petition prior to his 21st birthday.

However, the evidence submitted with the motion to reopen does not resolve the issues we identified in our prior decision. For example, the Petitioner asserts the 2014 passport is fake. The Petitioner provided limited evidence of the fictitious nature of the passport – including an affidavit from his mother – but nothing to explain how Bangladeshi officials identified the 2014 passport as verified, while his other two passports, which were issued in 2017 and 2020 bearing a different date of birth, were identified by the same officials as fraudulent. Instead, counsel and the Petitioner’s mother claim the birth certificate underlying the 2014 passport was fake, used to obtain a validly issued passport from the Bangladeshi government through the assistance of a broker. These explanations from counsel and the Petitioner’s mother do not overcome the findings of the overseas investigation that the two passports that were issued later in time, in 2017 and 2020, were issued after the Petitioner submitted an altered birth certificate bearing a later date of birth. As discussed in our prior decision, affidavits from family members are insufficient to overcome the results of our overseas investigation, supporting a conclusion that his true date of birth was in 1991.

The Petitioner, again through counsel, claims the arguments he previously raised about his sister’s date of birth in 1991 relate to his own age because if he was born in 1991, he would have had to have been premature based on her date of birth. As discussed in our appeal decision, the Petitioner’s sister’s age is not at issue here, and we do not have sufficient evidence about her identity to make a determination about her relation to his age. Further, the evidence provided on motion contains general information related to premature births but nothing specific to support a conclusion as to the Petitioner. Thus, the limited evidence of premature birth statistics is not sufficient to refute all other evidence of his conflicting dates of birth and bear his burden of proof by a preponderance of the evidence to establish eligibility for SIJ classification.

On motion to reconsider, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on general assertions of eligibility for SIJ classification but does not cite any specific provisions of law or policy that render our prior decision erroneous at the time it was issued.¹ The Petitioner’s contentions in his current motion largely reargue facts and issues we already considered in our previous decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (“[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision”). The Petitioner now argues we improperly substituted new reasons for the denial of his SIJ petition, supplanting the original decision of the Director. To the contrary, although we elaborated on the explanation of the basis for the denial – the Petitioner did not establish he was under 21 years of age at the time of filing his SIJ petition, thereby rendering USCIS unable to ascertain his eligibility for SIJ classification or whether his request was bona fide such that consent was warranted – we did not do so without providing the Petitioner with the opportunity to respond prior to the issuance of that decision. He was provided, through the issuance of a notice of intent to dismiss, with notice of the additional derogatory information, specifically the results of the overseas investigation, and given an opportunity to explain or rebut the information. 8 C.F.R. § 103.2(b)(16)(i). Thus, his motion to

¹ We note the Petitioner has cited to a U.S. District Court decision as support for his argument on appeal; however, such decisions are not binding authority. *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (“A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.”) (quoting 18 J. Moore, et al., *MOORE’S FEDERAL PRACTICE* § 134.02(l)(d), p. 134-26 (3d ed. 2011)); *see also Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993) (observing that district court decisions are not binding on the Board of Immigration Appeals).

reconsider does not establish that we based our last decision on an incorrect application of law or policy at the time of that decision. 8 C.F.R. § 103.5(a)(3). The motion likewise does not establish that our last decision was incorrect based on the evidence in the record of proceeding at the time of that decision. *Id.* Therefore, the underlying petition remains denied.

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 motion 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.