



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

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

In Re: 27125782

Date: JUL. 06, 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 El Salvador, 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 that a juvenile court had issued an order containing the requisite findings as to dependency, parental reunification, and best interest of the child. We dismissed a subsequent appeal, agreeing with the Director's conclusions as to the court order lacking the necessary parental reunification and best interest determinations, and we further dismissed two prior combined motions to reopen and reconsider. The matter is again 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). 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).

On motion, the Petitioner submits new evidence of the underlying intent behind the juvenile court order, specifically an order on motion for clarification. The Petitioner asserts that this new evidence establishes eligibility, as it supports a finding that the juvenile court made all the requisite findings to support a finding that he was eligible for SIJ classification. However, we note this evidence was submitted after the motion itself, despite the Form I-290B indicating, through box-check, that the brief and all evidence accompanied the motion. As such, the Petitioner failed to comply with the requirements of a motion to reopen at the time of filing. *See* 8 C.F.R. § 103.5(a)(2) (stating a motion to reopen must be supported by affidavits or other documentary evidence). Further, U.S. Citizenship and Immigration Services (USCIS) had previously requested the evidence, which the Petitioner provided after filing the motion. 8 C.F.R. § 103.2(b)(8)(ii) (permitting USCIS to request missing initial evidence be submitted within a specified time period as determined by USCIS).

The scope of a motion is limited to “the prior decision” and “the latest decision in the proceeding.” 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Rather, he has provided supplemental evidence that should have been submitted at the time of filing the SIJ petition. Evidence that a state juvenile court made the requisite determinations must be submitted in support of the SIJ petition. See 8 C.F.R. § 204.11(d) (stating “a petitioner must submit all of the following evidence, as applicable to their petition: . . . Juvenile court order(s) with the judicial determinations required”). Further, a petitioner must be eligible for the immigration benefit sought at the time of filing. 8 C.F.R. §§ 103.2(b)(1) (providing that a petitioner for an immigration benefit “must establish that he or she is eligible for the requested benefit at the time of filing the benefit”) and 204.11(b)(4) (stating that an SIJ petitioner must be subject to a juvenile court order meeting the requirements further delineated in the regulations); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.”). The regulations list the required initial evidence, including a juvenile court order or orders that comport with the requirements outlined in the regulations and are “in effect on the date the petitioner files the petition.” 8 C.F.R. § 204.11(b)(4); (c)(3)(ii). Although the Petitioner has now provided an order clarifying the initial juvenile court order, the actual order did not contain the requisite findings, and the present order was not signed, dated, or issued until [REDACTED] 2022 – after he filed his SIJ petition, his appeal, and his previous combined motions. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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). On motion, 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, fails to cite any specific provisions of law or policy that render our prior decision erroneous at the time it was issued. He argues the order on motion for clarification clarifies the prior juvenile court order, such that it renders the Petitioner eligible for SIJ classification. The Petitioner’s contentions in his current motion merely reargue facts and issues we have already considered in our previous decisions. 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”). His motion to 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 evidence was untimely, and 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 motions 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.