



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

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

In Re: 27288409

Date: JUNE 26, 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 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 New York, New York District Office denied the SIJ petition, concluding that the Family Court that had issued a guardianship order and *ORDER-Special Immigrant Juvenile Status* (SIJ order) did not have jurisdiction under New York law over the Petitioner's custody as a juvenile and the guardianship order was not equivalent to a qualifying custodial placement. We dismissed a subsequent appeal, incorporated here by reference, determining that based on our de novo review, the record did not establish that the Family Court had issued a qualifying parental reunification determination because the SIJ order does not cite any specific provision in New York law for the Family Court's reunification determination. We also concluded that the Petitioner's request for SIJ classification did not merit USCIS' consent. We dismissed a subsequent combined motion to reopen and reconsider, also incorporated here by reference, reserving the issue of consent and concluding that the Petitioner again did not show the basis in New York law for the Family Court's reunification determination and therefore did not show that the Family court had issued a qualifying parental reunification determination. The matter is now before us on a new combined motion 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 new combined motion.

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). 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 states that he preserves all arguments raised in the prior motion and includes a Family Court transcript from his SIJ proceedings through August 2016 that he claims was previously unavailable.

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 initial motion to reopen. Here, the Petitioner submits a certified 2023 transcript of his Family Court proceedings (through August 2016) that led to the guardianship and SIJ orders. However, the Petitioner has not explained why he did not previously provide this evidence on appeal or initial motion, stating only that it was previously unavailable. Moreover, and critically, the transcript lacks information showing that the Family Court had considered or cited to any New York state law in reaching its reunification determination. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. Moreover, the Petitioner’s assertion in the current motion, i.e., that he preserves all arguments raised in his prior motion, merely reargues 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”). We will not re-adjudicate the SIJ petition anew and, therefore, the underlying SIJ petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.