



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

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

In Re: 28153085

Date: OCT. 17, 2023

Motion on Administrative Appeals Office Decision

Form I-600, Petition to Classify Orphan as an Immediate Relative

The Petitioner, a U.S. citizen, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). An orphan from a country that is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, who is under the age of 16 at the time of filing and adopted abroad by an eligible U.S. citizen, or who is coming to the United States for such an adoption, may be classified as an immediate relative.

The Director of the National Benefits Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary met the definition of an orphan. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider. We incorporate our prior decision by reference.

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 motion.

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 includes a State Department Reciprocity Schedule confirming that late registration for life events is common in Uganda. The Petitioner submits a letter from a church confirming the Beneficiary's baptism. In addition, the Petitioner submits affidavits and identification cards for various individuals. One affidavit, prepared by a local chairman, indicates that the consular investigation was frustrated by individuals providing answers to questions when they did not actually know the requested information. The chairman provides the names and identifications of three such individuals. In addition, the Petitioner's aunt provides an affidavit explaining why her answers may have appeared discrepant. The Petitioner asserts that these new facts establish eligibility, as they explain the inconsistencies uncovered by the consular investigation regarding the Beneficiary's year

of birth, and they also lend validity to the late-issued birth certificate. She asks us to consider the context of the submitted evidence and conduct a new investigation including DNA testing and additional field interviews.

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.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on USCIS policy noting that adjudications must be decided based on the preponderance of the evidence. She argues that the Director's denial instead required her to submit "sufficient provable evidence to overcome" the information contained in the consular investigation. She also indicates that the Director discussed the contents of the consular investigation in vague terms. She contends that relevant, probative, and credible evidence was submitted to show the Beneficiary's age, and that the Petitioner has met her burden of showing this eligibility criterion by the preponderance of the evidence.

The new evidence provided by the Petitioner seeks to address questions regarding the child's date of birth and the identity of the birth father. The appeal decision reserved the issue of the father's identity and based the decision on the discrepancies surrounding the child's date of birth.¹ The new evidence submitted with respect to the date of birth are a church letter and affidavits. The church letter indicates that the Baptism card presented before the Director was valid. The affidavits both indicate that the consular officers were mistaken in their understanding of the Beneficiary's date of birth. As further support of the argument made on appeal that the consular investigation was flawed, the councilman provides specific individuals that he claims provided inaccurate information. The Beneficiary's aunt clarifies that she correctly listed 2003 as the year of birth during the interview but was misunderstood. During the interview, she was asked to bring her biological children; when asked for their information, she listed her own children as having been born in 1997 and 1999. The Beneficiary's aunt believes that the consular officer mistakenly attributed the date of birth of one of her own children to the Beneficiary.

This new evidence is insufficient to overcome the uncertainty regarding the Beneficiary's date of birth that was noted in the appeal decision. We appreciate that it is not uncommon for late-registered birth certificates to be used in Uganda, as is noted in the submitted reciprocity schedule. However, we can give only limited evidentiary weight to a document created over a decade after the events in question and only two months before the orphan petition was filed. We have also considered the discrepancies around the Beneficiary's age uncovered throughout the consular interview process. We have reviewed the Petitioner's renewed assertion that the interview process was incomplete and flawed. In our appeal decision, we noted that the consular report made clear that close relatives of the Petitioner and

¹ The issue of the Beneficiary's date of birth remains dispositive. We again decline to reach and reserve on whether the Beneficiary meets the definition of an orphan due to the death of her father or other forms of permanent separation from her father. Section 101(b)(1)(F)(i) of the Act.

Beneficiary had been interviewed, and that these individuals consistently indicated that the Beneficiary was over 18 when the Petition was filed.

The Petitioner asks us to discount the interviews and request that the consulate conduct a new investigation. However, the Petitioner has not provided sufficient evidence to allow us to discount the information in the consular report. As noted in our appeal decision, the Beneficiary's aunt and temporary caretaker was interviewed. It is not contested that she has first-hand knowledge of the Beneficiary's birth date. We appreciate that the Beneficiary's aunt may have been strained during the interview and may believe that the consular officer misunderstood her. However, there has been no prior indication of issues communicating during this interview. Because of the discrepancies in the record, we affirm our prior decision that the Petitioner has not established the Beneficiary's age by the preponderance of the evidence.

In support of the motion to reconsider, the Petitioner has primarily contested the contents of the Director's NOID and final denial. The Petitioner argues that the Director misstated the burden of proof by requiring "provable" evidence to overcome the information in the consular investigation. As noted above, our review on motion is limited to our latest decision; here, the latest decision is our appeal decision. Our decision evaluated the record evidence available regarding the Beneficiary's date of birth. After reviewing the prior submission and the new information submitted on appeal, we noted that the Petitioner had not "established by a preponderance of the evidence" that the Beneficiary met the definition of an orphan. Therefore, we applied the same standard that the Petitioner articulates on motion. We did not require the Petitioner to provide provable evidence to overcome the consular investigation.²

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.

² Consular investigators are instructed to refer petitions which are "not clearly approvable" for a decision by USCIS. 8 C.F.R. § 204.3(k)(2). Our appeal decision referenced the not clearly approvable standard only in connection with the actions taken by consular officers.