



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

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

In Re: 25215161

Date: APR. 19, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions, codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish that he had entered into the marriage in good faith or that he had been subjected to battery or extreme cruelty, as required. On appeal, we adopted and affirmed the Director's decision and dismissed the Petitioner's appeal accordingly. The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motion.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our 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 cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The issue before us is whether the Petitioner has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We find that the Petitioner has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

The Director denied the VAWA petition, concluding that the Petitioner did not establish he had married A-S-<sup>1</sup> in good faith, or that she had battered him or subjected him to extreme cruelty as claimed. Among other things, the Director found that the Petitioner's initial affidavit lacked probative details and did not provide insight into the dynamics of their marriage. The Director

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<sup>1</sup> Initials are used throughout this decision to protect the identities of the individuals.

further found that the Petitioner's affidavit did not describe any mutual interests, the couple's courtship, or the circumstances and events demonstrating their involvement prior to or during their marriage, and that his supplemental affidavit only referenced the discrepancies noted in the Director's request for evidence. In addition, the Director found that the third-party affidavits in the record primarily addressed A-S-'s behavior towards the Petitioner and did not provide specific details regarding the couple's relationship.

In our decision to dismiss the appeal, we determined that the Petitioner has not met his burden of establishing he married A-S- in good faith. The medical records submitted on appeal were dated after the Petitioner married A-S- and, therefore, did not reflect the Petitioner's intentions in entering the marriage. Although we acknowledged the new affidavit from the Petitioner submitted on appeal which contained some descriptions of the couple going out to dinner, watching movies, sightseeing, and going to a casino, we did not find that the Petitioner has provided probative, insightful details regarding his marital intentions. In addition, the Petitioner's new statement on appeal contended that he and A-S- *began* their relationship in [redacted] of 2016, one month *after* their marriage. Even assuming the Petitioner made a typographical error regarding the date the couple's relationship began, he had nonetheless not provided specific details regarding their courtship, wedding ceremony, or shared residence to demonstrate his good faith entry into the marriage. Although the Director specified that the third-party affidavits in the record did not provide details regarding the couple's relationship, the Petitioner did not submit any additional third-party statements on appeal. We further detailed that two of the affidavits in the record contained identical statements, indicating they were not independently written.

We additionally noted that the record appeared to contain an inconsistency with respect to the timing of A-S-'s purported proposal to the Petitioner in October of 2015 and their claimed joint residency beginning in February of 2016. A printout of A-S-'s criminal history from the [redacted] Department of Corrections in the record stated that A-S- was convicted of possession of cocaine on [redacted] [redacted] 2013, and that her "discharge date" was [redacted] 2016. Therefore, it appeared that A-S- may have been incarcerated at the time she purportedly proposed to the Petitioner and was living with him. Based on a totality of the circumstances, we dismissed the appeal as the Petitioner had not met his burden of showing he entered into marriage with his U.S. citizen spouse in good faith as the Act required.<sup>2</sup>

On motion, the Petitioner contends that we failed to adhere to the preponderance of the evidence standard and impermissibly heightened our scrutiny of the evidence furnished. In support, the Petitioner submits duplicate copies of documents previously submitted, including the Petitioner's affidavits, biographic documents pertaining to the Petitioner and A-S-, photographs, 2017 medical records from a mental health counseling center pertaining to the Petitioner, tax documentation, and a

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<sup>2</sup> As for the Director's finding that the Petitioner also did not establish that A-S- battered him or subjected him to extreme cruelty, we did not reach this issue and, therefore, reserved it, as there was no constructive purpose to addressing it because it could not change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015).

certificate of conduct issued by the [ ] Police Department in April 2018, valid for 60 days.<sup>3</sup>

The documents submitted on motion were previously reviewed and considered, by the Director and this office, when rendering the decisions to deny the application and dismiss the Petitioner's appeal. The Petitioner has not submitted new facts on motion supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

On motion, the Petitioner has not established that he entered into marriage with his U.S. citizen spouse, as the Act requires. Accordingly, the Petitioner has not overcome our previous determination that he is not eligible for VAWA classification

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.

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<sup>3</sup> We note that on motion the Petitioner does not address the inconsistency that was raised in our decision to dismiss the appeal with respect to the timing to A-S-'s purported proposal to the Petitioner in October of 2015 and their claimed joint residency beginning in February of 2016.