



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

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

In Re: 27611629

Date: AUG. 14, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 petition, concluding that the Petitioner was not eligible for immigrant classification because he had been convicted of an aggravated felony, and therefore, could not establish his good moral character, as required. We dismissed the Petitioner's appeal, a motion to reconsider, and subsequent 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 petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with the U.S. citizen spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, the petitioner must establish their good moral character. Section 204(a)(1)(A)(iii)(II)(bb) of the Act. No person shall be found to be a person of good moral character if they have been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, at any time. Section 101(f)(8) of the Act; 8 C.F.R. § 204.2(c)(1)(vii). An offense that involves fraud or deceit in which the loss to the victim(s) exceeds \$10,000 is an aggravated felony. Section 101(a)(43)(M)(i) of the Act.

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).

On motion, the Petitioner submits a brief and copies of evidence already contained in the record. In our previous decisions, incorporated here by reference, we agreed with the Director's determination that the Petitioner was barred from establishing his good moral character due to his conviction for an aggravated felony under section 101(a)(43)(M)(i) of the Act. Notably, in 2003, an Immigration Judge found that the Petitioner's conviction was for an aggravated felony, a finding upheld by the Board of Immigration Appeals (the Board) in 2003¹ and, subsequently, the U.S. Court of Appeals for the Ninth Circuit. *See Balogun v. Gonzales*, 126 Fed.Appx. 874, 875 (9th Cir. 2005) (unpublished) ("The crime was also an aggravated felony under 8 U.S.C. § 1101(a)(43)(M), because it involved fraud in which the loss to the victims exceeded \$10,000."). We addressed the Petitioner's contentions that he was eligible for a statutory waiver under section 212(h) of the Act; however, we noted that although he may be statutorily eligible to apply for a discretionary waiver for his ground of inadmissibility under section 212(h), he nonetheless remains unable to establish his good moral character as a result of his conviction for an aggravated felony. As the plain language of section 101(f)(8) of the Act makes clear, "No person shall be regarded as . . . a person of good moral character . . . who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43))." There is no waiver available for an aggravated felony conviction with respect to establishing good moral character. Inasmuch as the Petitioner asserts in the present motion that his aggravated felony conviction does not preclude him from establishing good moral character, he does not provide any relevant policy or pertinent precedent decision to support his assertion, as the cases cited relate to inadmissibility and eligibility for a waiver under section 212(h) of the Act, and do not address section 101(f)(8) of the Act.²

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. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. The Petitioner's contentions in his current motion to reconsider 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) (stating that "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

¹ In the Board's October 7, 2003, decision, it found that the Petitioner acknowledged in his Plea Agreement that the loss to the victims was \$97,300. The Board "affirm[ed] the Immigration Judge's conclusion that the [Petitioner] was convicted of an aggravated felony offense within the meaning of section 101(a)(43)(M) of the Act. . . ." We note that in 2007, the Petitioner filed a motion to reopen on grounds unrelated to the aggravated felony. The Board found that the Petitioner did not offer new, material evidence and denied the motion as untimely.

² Additionally, the Petitioner references a Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQPRD 70/8.1.8.2, *Determinations of Good Moral Character in VAWA-Based Self-Petitions* (January 19, 2005), <http://www.uscis.gov/legal-resources/policy-memoranda>. The memorandum addresses the application of section 204(a)(1)(C) of the Act, which allows for a finding of good moral character if the act or conviction barring the self-petitioner from establishing good moral character under section 101(f) of the Act is "waivable" for purposes of determining inadmissibility or deportability under section 212(a) or 237(a) of the Act and "connected to the [foreign national's] having been battered or subjected to extreme cruelty." Here, the Petitioner was convicted of an aggravated felony under section 101(a)(43) of the Act, which is not waivable. Moreover, the record does not contain any evidence suggesting that his conviction was in any way related to his having been battered or subjected to extreme cruelty.

error in the prior Board decision”). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.