U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27548254

Date: DEC. 7, 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. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish that he was free to marry his U.S. citizen spouse. We dismissed a subsequent appeal. The matter is now 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 motion.

Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion to reopen that satisfies these requirements and demonstrates 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). 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 a motion to reconsider that satisfies these requirements and demonstrates eligibility for the requested benefit.

On motion, the Petitioner submits additional affidavits regarding the registration of his spouse's death and contests the correctness of our prior decision. The Petitioner asserts that these new facts establish eligibility, and that we did not review the evidence provided under the "any credible evidence" standard.

At issue is whether the Petitioner continued to be married to another individual at the time he claimed to marry a U.S. citizen. The Petitioner claims that his former spouse passed away in 2008, thus terminating

his prior marriage, a fact which must be shown by a preponderance of the evidence. However, the authenticity of the certificate of death presented as evidence of termination of the Petitioner's prior marriage in Nigeria has been in question. The Director determined that the Medical Certificate of Cause of Death (medical certificate), issued by an unidentified authority, did not meet the requirements for proof of death specified by the U.S. Department of State's Reciprocity Schedule for Nigeria. On motion to the Director, the Petitioner provided a death certificate issued by the National Population Commission in [redacted] The Director dismissed the motion after determining that [redacted] was not the appropriate state authority and citing that the death certificate was issued only one day after the denial of the VAWA petition. The Petitioner submitted a second motion to the Director with a death certificate from the National Population Commission registered in [redacted] an "Invalidation of Death Certificate" from [redacted], and a "Verification of Document" regarding the late registration of deaths in Nigeria. The Director dismissed the second motion based, in part, on the unexplained 24-hour turn around between denial of the VAWA petition and registration of the death in [redacted]. On appeal, the Petitioner argued that the Director erred by not considering the documents submitted under the "any credible evidence" standard for VAWA and that a preponderance of the evidence established that his prior spouse passed away in 2008. We dismissed the appeal after determining that the Petitioner had not sufficiently explained how he obtained a death certificate within 24 hours of the denial of the VAWA petition.

Now, on motion, the Petitioner has provided additional evidence that supports his assertion that the denial of the VAWA petition occurred prior to July 26, 2021 as stated on the denial letter. A review of internal USCIS systems shows that the VAWA petition was denied on July 23, 2021, and the decision was mailed the same day. In addition to the above, the Petitioner provided additional evidence of the communication between himself and an attorney in Nigeria regarding the registration of the death of his prior spouse. However, a review of the complete record revealed additional derogatory information that was not previously disclosed by the Director.

In September 2011 and again in January 2012, the Petitioner requested a B1/B2 visa from the U.S. consulate in [redacted] Nigeria. On both forms DS-160, Online Non-Immigrant Visa Application, submitted to the U.S. Department of State the Petitioner claimed to be married to G-O-I-[1], his deceased spouse, and listed her address as "same as home address." The Petitioner electronically signed the Forms DS-160 on September 7, 2011 and January 17, 2012, respectively. By submitting the visa request the Petitioner certified that all the information on the application was true and correct to the best of his knowledge and that "All declarations made in this application are unsworn declarations made under the penalty of perjury." The claims made on the Petitioner's non-immigrant visa application that his spouse was alive and living with him in 2011 and 2012 directly contradict the evidence he has submitted regarding her death in 2008. This additional derogatory information casts doubt on his assertion that he was free to marry his U.S. citizen spouse and thereby establish a qualifying relationship under VAWA.

We issued a notice of intent to dismiss and request for evidence to provide the Petitioner the opportunity to rebut the derogatory information in the record. In response, the Petitioner provides a new personal statement regarding the submission of his visa application, a brief from his attorney, and an affidavit from someone he claims prepared the visa application on his behalf. The Petitioner states that he used a travel service to file his non-immigrant visa application and that he was unaware of the contents of his applications. He further provides an affidavit from V-J-, a person claiming to be the

[1] We use initials to protect the privacy of individuals.

owner of the travel agency that filed the Petitioner's application.[2] However, records indicate that at the time both visa applications were submitted the Petitioner responded "no" to the question "Did anyone assist you in filling out this application?" The Petitioner's claims regarding his visa application are inconsistent with the record submitted to the Department of State. The Petitioner has submitted discrepant information and failed to establish, either through documentary evidence or attestation, where the truth lies. As a result, the Petitioner has not established, by a preponderance of the evidence, that he was free to marry his U.S. citizen spouse.

We must consider any credible evidence relevant to the VAWA petition and do not require specific documents to support the Petitioner's claims, however, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Based on the evidence above, the Petitioner's own claims on his non-immigrant visa application, and the discrepancies identified in the record, the Petitioner has not established, through credible evidence, that he was free to marry his U.S. citizen spouse, as required. 8 C.F.R. § 204.2(c)(2)(ii).

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 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.

[2] The Petitioner's attorney argues that the Petitioner was unaware of the contents of the visa application and is therefore not subject to inadmissibility for fraud and misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The Petitioner's inadmissibility is not relevant to the VAWA petition, but we note that the Petitioner's signature and subsequent attestation before a consular officer to the contents of the application "establishes a strong presumption" they knew and assented to the contents. *See Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018).