U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29022375

Date: DEC. 8, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

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 Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the record did not establish the Petitioner resided with her spouse or entered into a good faith marriage with him. 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.

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).

In our prior decision, which we incorporate here by reference, we determined that based on inconsistencies and lack of substantive information regarding the Petitioner's claimed joint residence with her U.S. citizen spouse, P-H-,[1] she did not establish that she resided with him. As we determined the Petitioner did not establish she resided with P-H-, which was dispositive of the appeal, we declined to reach and reserved her arguments and evidence regarding whether she entered into marriage with P-H- in good faith.

[1] Initials are used throughout this decision to protect the identity of the individual.

On motion, the Petitioner submits a brief, her statement, bank statements, utility bills, a 2016 tax return, 2017 and 2018 tax transcripts, a pregnancy verification document, and a medical letter regarding her miscarriage. The Petitioner also submits several documents from P-H-, including his statement, Connecticut health insurance exchange information, a social security letter, a Connecticut identification card, a greeting card he sent to the Petitioner, and his mother's statement. We note that several of these documents were submitted previously. The Petitioner asserts that the record establishes she resided with P-H- and they entered into their marriage in good faith.

We will first address the issue of whether the Petitioner resided with P-H-. We previously discussed the two lease agreements submitted with her VAWA petition. The first one was for an address in [redacted], New York, was dated November 2017 to October 31, 2018, and was between [redacted], the Petitioner and P-H-. The second lease listed the same address, was dated November 1, 2017, to November 1, 2018, and was between landlord N-V-, the Petitioner, and P-H-. We mentioned the two leases contained slightly inconsistent dates and different landlord names, and the Petitioner did not explain why there were two versions of the lease. Therefore, we gave the two leases minimal weight. On motion, the Petitioner states we did not consider the possibility the building was sold and a new entity became the landlord, and it would be a severe burden on her to submit proof of that real estate transaction. As the Petitioner is not asserting that the building was sold, and only offering that as a possibility, we give limited weight to her explanation for the discrepancies in the leases she submitted.

Next, the Petitioner attempts to explain discrepancies in her address from November 2018 until February 2019. We stated the VAWA petition reflected she resided with P-H- in [redacted], New York from November 2018 to February 2019, which was inconsistent with the [redacted], New York address from the bank account statements covering November 2018 to January 2019. However, on motion she now asserts that she lived in [redacted], CT from November 2018 to February 2019, and this is where her pregnancy and miscarriage happened. She mentions that she left the [redacted], New York address in September after an armed man entered her apartment looking for P-H-, and she moved to [redacted], CT. She asserts P-H- joined her in November 2018 and her prior lawyer advised not mentioning the move until their immigration interview. She states they used P-H-'s sister's address as their mailing address, and they did not get a chance to explain things at their immigration interview in January 2019, as their attorney stopped the interview due to the officer being abusive. She claims that her address was never updated by U.S. Citizenship and Immigration Services. The Petitioner's statement adds further inconsistency to the record. In her VAWA petition, filed in July 2019 and therefore after the time she claims she was unable to update her address to [redacted], CT, the Petitioner listed the [redacted], NY address as her place of residence, and that she lived at this address with P-H- from November 2018 until February 2019. This address differs from the [redacted], CT address she claims on motion and the [redacted], New York address on her bank statements from that time frame. Additionally, she does not provide the address for P-H-'s sister.

The Petitioner further asserts that we did not address the previously submitted affidavit from P-H-'s mother. We disagree. We collectively addressed the third-party affidavits in the record, and determined they were general in nature and lacked probative value, as they lacked specific dates and details of any instances where the affiants met at the Petitioner's and P-H-'s residence and did not provide descriptions of the actual residence evincing their life there. The Petitioner's motion does not

include an updated affidavit from P-H-'s mother, or any of the other affiants, which address these concerns.

Next, the Petitioner addresses the inconsistency between the end date of her residence with P-H- and the dates on their bank account and utility statements. We mentioned the Petitioner's claim that she stopped residing with P-H- in February 2019, but her bank account statements and utility bills were inconsistent with this as they included both of their names until June 2019 and May 2019 respectively. She states that not terminating her bank account upon separation makes sense. She contends that terminating accounts immediately upon separation could cause checks to be dishonored and credits ratings to be negatively affected.

The Petitioner also claims that several documents being submitted on motion are evidence of her residence with P-H-. Specifically, she refers to her pregnancy verification document dated [redacted] 2019, and a medical letter regarding her miscarriage dated [redacted] 2019, neither which list P-H- as the father or her spouse; and P-H-'s [redacted] health insurance exchange information dated December 2018, social security letter dated December 2018, and identification card from [redacted] issued in January 2019. While the Petitioner's pregnancy records reflect she was treated in [redacted], CT and P-H's documents list the [redacted], CT address, they are insufficient, in light of all the aforementioned inconsistencies with the previously submitted documentary evidence, to establish residence together.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established she resided with P-H-.[2] 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] As the record does not establish the Petitioner resided with P-H-, which is dispositive in this matter, we decline to reach and hereby reserve the Petitioner's arguments and evidence regarding whether she entered into marriage with P-H- in good faith. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (explaining that "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) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).