



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

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

In Re: 28673478

Date: NOV. 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. *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 a qualifying relationship with her U.S. citizen spouse, that she had resided with her U.S. citizen spouse or that she had entered her marriage in good faith. We determined that the Petitioner had established the termination of her prior marriage in accordance with Nigerian customary law but dismissed a subsequent appeal because she did not establish the joint residence or good faith marriage requirements under VAWA. 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). 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 an additional personal statement, affidavits from third parties and photographs of the claimed marital residence.<sup>1</sup> The Petitioner asserts that this new evidence establishes eligibility, as it provides sufficient detail of her marital life with E-W-V-<sup>2</sup> to meet the residence and good faith marriage requirements by a preponderance of the evidence. The Petitioner's

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<sup>1</sup> The Petitioner has requested an oral hearing related to the current motion. We decline to hear oral arguments in relation to the present case.

<sup>2</sup> We use initials to protect the privacy of individuals.

statement on motion is similar to the statements previously provided to the Director with her initial application and on appeal. The Petitioner provides details regarding her relationship with E-W-V- and some detail about their daily life. In addition to her own personal statement, the Petitioner provided additional affidavits from third parties on appeal. An Affidavit from L-W- states that he was the childcare provider for the Petitioner. L-W- refers to the Petitioner's youngest child as "baby" and never provides a name despite the child being six-years-old at the time of the affidavit. He also states that on one occasion E-W-V- brought the Petitioner's child to daycare and the Petitioner asked to have his name added to emergency contact information. L-W- states generally that they were a good couple and that he was disappointed at how the marriage ended.

An affidavit from A-S- describes an incident he witnessed on the street between the Petitioner and E-W-V- but does not provide probative details regarding whether he interacted with the couple at their marital residence. Similarly, T-A- provided an affidavit in which he claimed to have dinner with the couple on one occasion and witness E-W-V- being verbally abusive. The affidavit does not state that T-A- ever visited the Petitioner and E-W-V- in their claimed joint residence.

The Petitioner claims that she and her spouse resided with V-T- from November 2016 to June 2017. In his affidavit on motion, V-T- states that the Petitioner resided with him beginning in September 2016 and that E-W-V- moved in with the Petitioner in November 2016. However, in his initial affidavit provided with the VAWA petition, V-T- did not claim to have ever resided with the Petitioner or her spouse. V-T- stated that he knew the Petitioner and her spouse from church and mentioned seeing the Petitioner begin to come to church on her own. The unexplained inconsistency in the two statements from V-T- casts doubt on the Petitioner's assertions that she and E-W-V- resided with V-T-.

In addition, the Petitioner provided two "receipts" from V-T- for rent. The receipts show rent in the amount of one hundred and twenty thousand dollars for a one-week period. On both receipts the word "thousand" is crossed out but the numerals are unchanged. The receipt from December 2016 has number [ ] while the receipt from January 2017 has number [ ]. The Petitioner has not explained why the receipt with the lower number was provided three weeks after the receipt with the higher number or why the same mistake regarding the amount of rent due was made on both receipts a month apart. Moreover, the signature of V-T- on the receipts does not match the signature on his affidavits. The Petitioner also provided some photographs of the claimed marital residence. These photographs do not appear to show a comingling of assets, provide evidence of cohabitation, or depict who resides in the residence.

The Petitioner further provided an affidavit from T-O- where he claims that the Petitioner and her spouse resided with him. T-O- states on motion that there was no formal lease agreement and that he witnessed the degradation of the relationship between the Petitioner and E-W-V-. On motion, T-O- does not provide a range of dates for when the Petitioner and E-W-V- resided with him or discuss living arrangements regarding the couple and the Petitioner's child. However, in his statement to the Director, T-O- stated that the Petitioner and E-W-V- began residing with him in New York beginning in November 2016 to March 2019. These dates directly contradict the Petitioner's statement and the statement of V-T- regarding the Petitioner's residence during her marriage. The inconsistencies between the evidence provided on motion and the record below casts further doubt on the Petitioner's claims of joint residence and good faith marriage.

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 to reconsider, the Petitioner contests the correctness of our prior decision. In support of the motion to reconsider, the Petitioner relies on *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), *Matter of Boromand*, 17 I&N Dec. 450 (BIA 1980), *Matter of McKee*, 17 I&N Dec. 332 (BIA 1980) and 8 C.F.R. § 204.2(c)(2)(vii) to assert that we did not review the Petitioner's evidence under the "any credible evidence" standard or apply the appropriate standards related to the intent of the Petitioner in entering the marriage. We acknowledge the Petitioner's assertions regarding the relevant legal precedents and standard of proof. However, the inconsistencies identified in our prior decision have not been addressed on motion and the additional evidence provided with the motion to reopen has added to the unexplained inconsistencies already in the record. While we must accept any credible evidence of relationship, it is our sole discretion to decide what weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The burden of proof is on the Petitioner to establish her eligibility and, where there are material discrepancies, to provide evidence that establishes where, in fact, the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit, including the Petitioner's own statements. *Id.*; see also *Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up). In view of the unresolved inconsistencies identified above, the limited probative value of the affidavits, and lack of credible corroborating documentation, the evidence considered individually and, in the aggregate, remains insufficient to show that the Petitioner "more likely than not" resided with and entered into the marriage with E-W-V- in good faith.

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.