U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28233486

Date: OCT. 11, 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 did not establish that she shared a residence with her United States citizen spouse, or that she married her spouse in good faith. 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).

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with a United States citizen spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, petitioners must show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1)(i).

In our prior decision, incorporated here by reference, we noted that the Petitioner married D-S-R-[1], a United States citizen. We discussed the Director's decision and the discussion of the evidence submitted in support of her Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), as well as the Director's discussion of the discrepancies in the record. Notably, we stated that the record reflected that the Petitioner had stated that D-S-R- moved in with her in December 2015, but that she told United States Citizenship and Immigration Services (USCIS) investigators that he did not move in with her until October or November 2016. We noted that the Petitioner had submitted a lease for the apartment she claimed they shared, which was valid from August 1, 2015, until August 31, 2017, but was not signed by the Petitioner and D-S-R- until October 1, 2015.

Our decision also noted that the Petitioner had previously stated that she had asked D-S-R- to move in with her around Halloween, which conflicts with the date that the lease was signed. We further reviewed the evidence provided by the Petitioner with her appeal and acknowledged her contentions; however, we concluded that she had not overcome the reasons for the Director's denial, and we dismissed her appeal.

With her motion, the Petitioner submits a brief and an additional supplemental statement. The content of the brief is also contained in the Petitioner's statement. In her supplemental statement, the Petitioner reiterates a prior assertion that there is no inconsistency with the lease agreement, as "people often sign or move into an apartment after the initial date written on the form [l]ease." However, the Petitioner still has not provided an adequate explanation as to why the term of the lease is listed from August 1, 2015, until August 31, 2017, and then was not executed and signed by the Petitioner and D-S-R- until October 1, 2015.

Further, in her supplemental statement, she contends that our reference to Halloween in relation to D-S-R-'s move in date is erroneous, and that the only reference to Halloween was "regarding the subject of costumes in relation to that holiday." However, a review of an undated statement submitted by the Petitioner with her appeal stated, "[b]y the time we had our first Halloween together, [D-S-R-] was spending more time at [her] place than his house. It was very comfortable having him around and more than anything, it made [her] life happier. [She] told him how [she] feel about having him around and asked him if he wants to move in with [her]." As such, we determine that our discussion of her previous statements regarding when she asked D-S-R- to move in with her were not erroneous. The Petitioner stated that around Halloween, she asked D-S-R- to move in with her, but provided a lease that was signed by her and D-S-R- on October 1, 2015.[2]

We determine that the Petitioner has not resolved the discrepancies discussed in our dismissal of her appeal with her supplemental statement on motion. As we note here and in our prior decisions, the Petitioner has not provided sufficient evidence to demonstrate that she shared a residence with D-S-R-,

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

[2] The Director also denied the VAWA petition on the ground that the Petitioner had not established that she entered into her marriage with good faith intentions. However, as the Petitioner has not demonstrated her requisite joint residence with D-S-R-, we decline to reach and hereby reserve these arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

and as such, her VAWA petition remains denied. 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 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.