U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28586075

Date: OCT. 26, 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 VAWA petition, concluding that the Petitioner did not establish that she entered her marriage in good faith or resided with the alleged abuser. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.[1] 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 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.

The Director denied the VAWA petition because the Petitioner had not met her burden of proof in establishing that she had entered her marriage with her spouse in good faith and because the Petitioner had not established that she resided with her U.S. citizen spouse. On appeal, we adopted and affirmed the Director's decision as it relates to the joint residence requirement for VAWA. Section 204(a)(1)(A)(ii)(II)(dd) of the Act. We emphasized the inconsistencies between the information provided by the Petitioner in her personal statement and the information the Petitioner provided to the Texas Health and Human Services division regarding the occupants of her apartment and her place of residence during the period for which she claimed to be living with her spouse. In addition, we identified further inconsistencies in the evidence provided by the petitioner on appeal.

[1] The title of the Petitioner's brief indicates a joint motion to reopen and reconsider but the brief does not cite to any relevant case law related to a motion to reopen. The Form I-290B indicates that the motion was filed solely as a motion to reconsider and we evaluate it as such.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (BIA 2012) to assert that the Petitioner is only required to meet the preponderance of the evidence standard to establish eligibility for VAWA classification. We do not disagree with the standard of proof required for classification under VAWA and will accept any credible evidence that establishes the Petitioner did, in fact, reside with her spouse. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). However, 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. *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).

On motion, the Petitioner states that she and her spouse agreed to stay with one another on the weekends while she remained in [redacted] Texas with her children during the week. She further states that it was unfair to deny her petition without first requesting additional evidence related to her joint residence. We note that the Director sent a request for evidence (RFE) that included a request for additional evidence of shared residence in September of 2020. The evidence provided in response did not resolve the discrepancies outlined in the RFE and the petition was later denied. It is unclear whether the petitioner meant that we (the AAO) were required to issue a request for evidence before reaching our decision on appeal. Although 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE, neither the Act nor the regulations compel us to do so. Moreover, the Director issued an RFE and the decision provided adequate notice regarding the deficiencies in the petition, yet the Petitioner has not submitted sufficient documentation to establish that she resided with her spouse either on appeal or on the current motion. Our appeal decision provided specific examples of discrepancies that undermined the Petitioner's claim and she does not address those inconsistencies on motion. The Petitioner further states on motion that the Director's findings were unsupported by the facts of the case but does not provide any detail regarding which facts or discrepancies identified either in the Director's denial or our appeal decision were incorrect. As the Petitioner has not directly addressed the stated reasons for denial on motion, she has not met her burden in establishing that we erred as a matter of law or policy in dismissing her appeal. *Matter of Chawathe*, 25 I&N Dec. at 375.

As our previous decision addressed only the requirement that the Petitioner reside with her U.S. citizen spouse, we will not discuss the Petitioner's arguments on motion regarding good faith marriage. *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 the applicant did not otherwise meet their burden of proof).

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 reconsider is dismissed.