



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

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

In Re: 33748736

Date: SEP. 09, 2024

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 was not eligible for immigrant classification because he had been convicted of an aggravated felony, and therefore, could not establish his good moral character, as required. We dismissed the Petitioner's appeal, a motion to reconsider, and subsequent combined motions to reopen and reconsider. The matter is again before us on a combined motion 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)(i), (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, incorporated here by reference, we dismissed the Petitioner's combined motion to reopen and reconsider because it was untimely filed. We noted that regulations require a motion on an unfavorable decision to be filed within 33 calendar days of the date the decision is mailed. Here, the motion was received at the designated filing location on October 16, 2023, which was 63 days after we mailed our decision on August 14, 2023.

On motion, the Petitioner contests the untimely determination. He asserts that he mailed the motion on September 8, 2023, and U.S. Citizenship and Immigration Services (USCIS) acknowledged receipt

of the filing on September 12, 2023. The Petitioner contends that USCIS returned the contents of his filing based on an inadvertent omission of a check mark on the form and asked that he resubmit the filing. He submits a portion of the United States Postal Service Priority Mail envelope reflecting the September 12, 2023, received date. He also provides the USCIS notice dated September 22, 2023, that notes the Form I-290B, Notice of Appeal or Motion, filing did not include a check mark specifying whether he was filing a motion or appeal, the filing will be rejected if none of the boxes are checked, and the filing will need to be resubmitted if he would like further consideration of the Director's decision. The Petitioner argues that because he resubmitted his filing on October 10, 2023, as instructed, we should grant his motion to reopen and reconsider. He further states that "[n]otwithstanding the foregoing, it was clear that [he] had timely filed a Motion to Reconsider and to Reopen, as that was the title of his 15 page Brief filed contemporaneously in support of [the motion]."

Upon review, the Petitioner has not provided evidence to support the assertion that we erred in dismissing the motion as untimely. In addition, the Petitioner has not demonstrated 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 proceeding at the time of the decision. Consequently, we will dismiss the Petitioner's combined motion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.