



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

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

In Re: 33748319

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 did not establish she entered into marriage in good faith and resided with her former spouse. The matter is 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).

A petitioner who is the former spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner married the U.S. citizen spouse in good faith, and the petitioner demonstrates a connection between the legal termination of the marriage within the past two years and the U.S. citizen spouse's battery or extreme cruelty perpetrated against the petitioner. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Petitioners must also establish that they are eligible for immigrant classification based on the relationship, resided with the former spouse, were subjected to battery or extreme cruelty by the former spouse, and are persons of good moral character. *Id.* at 204(a)(1)(A)(iii).

The Petitioner filed her VAWA petition in September 2021. She indicated that she married her former husband in  2017 and resided with him from  until March 2017 when he filed for

divorce. In response to the Director's request for evidence, the Petitioner submitted a second personal affidavit, excerpts of bank account statements, a tax return, and affidavits from her father and family friend. The Director determined that the Petitioner did not establish by a preponderance of the evidence that she married her former husband in good faith and resided with him.

On appeal, the Petitioner asserted the Director erred in according little evidentiary weight to the submitted evidence and contended that denial of the VAWA petition will cause her to suffer extreme hardship upon removal because she has a son with special needs who requires medical care unavailable in the Petitioner's country of citizenship. In our prior decision, incorporated here by reference, we agreed with the Director's finding that the record did not establish the Petitioner entered into her marriage in good faith and jointly resided with her former spouse. We noted that while the record contained evidence that the Petitioner shared a joint bank account with her husband, the account statements are addressed to her former husband at a residence different than their claimed joint residence and dated after their separation. Further, the affidavits from the Petitioner, her father, and family friend lacked detailed, probative information regarding her intentions in marrying her former spouse and their relationship. Concerning her claim of extreme hardship upon removal, we indicated that extreme hardship is not required to establish eligibility for the benefit sought.

On motion, the Petitioner resubmits excerpts of bank statements and provides an updated medical report for her son. She asserts that we improperly evaluated the evidence in the record, applied the wrong evidentiary standard, and erred by not considering the hardship she and her son would suffer upon removal. The Petitioner contends that the affidavits lacked detailed, probative information about the relationship with her former spouse because they were submitted by estranged family members. She further argues that we placed undue value on the submitted bank statements and contends that they list an address other than the claimed joint residence because the bank account was opened by her former husband before their marriage and the address was not updated after he moved to their shared residence.

Upon review, the Petitioner has not provided evidence to support the assertion that we erred in dismissing the appeal. In addition, she 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. While the Petitioner explains that the account contains the former spouse's prior address because it predated their relationship, this explanation does little to overcome the deficiencies detailed in our prior decision nor does she otherwise establish by a preponderance of the evidence that she entered into her marriage in good faith and jointly resided with her former spouse. While we consider any credible evidence relevant to the petition, the determination of what evidence is credible and the weight given such evidence lies within our sole discretion.<sup>1</sup> Consequently, we will dismiss the Petitioner's combined motion.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.

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<sup>1</sup> Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).