U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15783044

Date: FEB. 3, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

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 Form 1-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding the Petitioner had not demonstrated he was subjected to battery or extreme cruelty by his U.S. citizen spouse and had not established his good moral character. We summarily dismissed the Petitioner's appeal because it did not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. Within our decision, we noted we had not received a brief or additional evidence from the Petitioner in the allotted 30-day time frame.

The summary dismissal decision is now before us on a motion to reopen and motion to reconsider. Upon review, we will dismiss the motions to reopen and reconsider.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must demonstrate that our most recent decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time the decision was issued. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(l)(v). The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 l&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Petitioner filed a VAWA petition in May 2017, which was denied by the Director in April 2020. The Petitioner timely appealed the adverse decision to our office in May 2020 by filing a Form I-290B, Notice of Appeal or Motion. The Petitioner indicated on the Form I-290B that he would submit

his "brief and/or additional evidence . . . within 30 calendar days of filing the appeal." We summarily dismissed the Petitioner's appeal in September 2020, as the Petitioner did not identify any errors in the Director's decision on his Form I-290B or submit a brief, additional evidence, or any correspondence. On instant motion, the Petitioner submits a brief requesting that we reopen and reconsider his VAWA petition as his appeal brief was untimely filed due to COVID-19 related issues in Petitioner's counsel's office. We note USCIS has issued extended flexibility guidance which provides that USCIS will consider a Form I-290B filed within either 60 or 90 days of an adverse decision, depending upon when the decision was issued. However, the guidance does not indicate that additional extended flexibilities apply to the required submission of a supporting brief within 30 calendar days of filing an appeal. Rather, the guidance pertains specifically to an extension of time for filing for certain immigration forms and responses to USCIS notices. Here, the record does not demonstrate that after the Petitioner filed his Form I-290B, USCIS issued a subsequent notice requesting a response, or that the Petitioner requested an extension of time to submit his brief and/or additional evidence in support of the appeal beyond the allotted 30 calendar days. As such, the Petitioner has not demonstrated that his submission of an appellate brief outside of the prescribed 30-day period following his Form 1-290B was timely.

The Petitioner further asserts that in accordance with *INS v. Abudu*, 485 U.S. 94 (1988), his motion to reopen and reconsider should be approved in the interests of justice because he has made a *prima facie* case for VAWA eligibility. However, unlike the matter before us, *INS v. Abudu* relates to whether a foreign national is entitled to reopening of deportation proceedings for the purpose of newly applying for asylum or withholding or removal. As such, the Petitioner has not demonstrated the applicability of *INS v. Abudu* to the instant matter. Rather than determining whether the Petitioner is eligible, *prima facie* or otherwise, for VAWA classification; we are considering whether the Petitioner has established that our prior decision summarily dismissing his appeal was improper, or that there are new facts or evidence that would warrant reopening of these proceedings. On motion, the Petitioner has not demonstrated that our prior decision was made in error or that reopening of these proceedings is warranted. Therefore, the Petitioner's appeal remains summarily dismissed, and his underlying VAWA petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.