



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

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

In Re: 18000160

Date: JUN. 10, 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 in 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 revoked the approval of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and the Petitioner appealed the decision. We dismissed the appeal and subsequent motions. The matter is again before us as a combined motion to reopen and to reconsider. Upon review, we will dismiss the motion.

## **I. LAW**

A petitioner who is the spouse of a United States 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).

U.S. Citizenship and Immigration Services (USCIS) may revoke approval of a VAWA petition at any time for good and sufficient cause. Section 205 of the Act, 8 U.S.C. § 1155; 8 C.F.R. 205.2(a). Petitioners bear the burden of proof to demonstrate eligibility by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). They may submit any credible evidence relevant to the VAWA petition for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

## II. ANALYSIS

The Petitioner is a native and citizen of the Ivory Coast who filed his VAWA petition in November 2010 based on his marriage to his U.S. spouse. In June 2012, the Director approved the VAWA petition, but subsequently revoked the petition after issuing a notice of intent to revoke. The revocation discussed the inconsistencies in the record and found that the Petitioner had not established that he resided with his U.S. citizen spouse, entered into the marriage in good faith, or that his spouse subjected him to battery or extreme cruelty. The Petitioner appealed the decision and in December 2016, we dismissed the appeal stating that while the Petitioner had established that he resided with his U.S. citizen spouse and was subjected to battery or extreme cruelty by his spouse, he had not established he entered into the marriage in good faith and that he was a person of good moral character. In August 2017, we withdrew our conclusion that the Petitioner had not established his good moral character but dismissed his motion to reconsider based on the record remaining insufficient to establish that he married his spouse in good faith. In May 2018, we dismissed the Petitioner's second motion, requesting us to reopen and to reconsider, again determining that the Petitioner had not met his burden of establishing his good faith intentions in marrying his U.S. citizen spouse. In December 2018, we denied the Petitioner's third motion, again requesting us to reopen and to reconsider, as untimely filed. We explained that motions on an unfavorable decision must be filed within 33 days pursuant to 8 C.F.R. § 103.5(a)(1) and 8 C.F.R. § 103.8(b). However, the petitioner filed his motion 34 days after the decision. In October 2020, we also dismissed the Petitioner's fourth motion, addressing the Petitioner's assertions that the delay in his filing was reasonable and beyond his control. We explained that we may excuse an untimely filed motion to reopen, in our discretion, if the petitioner demonstrates that the delay was reasonable and was beyond the petitioner's control, pursuant to 8 C.F.R. § 103.5(a)(1)(i), but the Petitioner had not met his burden.

In the instant motion, the Petitioner asserts that his untimely filing was due to reasonable delay, reiterating—as provided on fourth motion—that the delivery service did not deliver the motion on time but he “worked diligently” to timely gather supporting evidence. In his combined motion to reopen and to reconsider, he adds printouts of weather conditions and argues that this may have been the cause of the delay by the delivery service. We have reviewed the delivery receipts and printouts of the weather and understand that the untimely delivery of the motion was not within the Petitioner's control. However, the Petitioner does not provide an explanation for why he was unable to send his filing prior to June 16, 2018, two days before the expiration of the 33-day filing period. He included receipts, old emails, and photographs but does not claim that events out of his control prevented him from timely locating these documents. He also included two affidavits, each two pages long, from friends, who according to the record reside in the United States. While the Petitioner states he “worked diligently” to gather this evidence, he does not provide additional insight into this statement or explain why his efforts were not enough to timely file his motion within the regulatory allotted 33 days. He did not include any additional declarations explaining why he believes the delay in filing his motion was reasonable or beyond his control.<sup>1</sup>

---

<sup>1</sup> We acknowledge the additional evidence submitted with the instant motion in support of the Petitioner's assertions that he entered into his marriage with his U.S. citizen spouse in good faith. However, as the Petitioner has not overcome the procedural deficiencies in his motion, we need not reach the merits of his claim. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results

On motion, the Petitioner does not present new facts determinative of his reasonable delay claim or that the delay in filing his motion was beyond his control, pursuant to 8 C.F.R. § 103.5(a)(2). Further, the Petitioner does not assert any new reasons for reconsideration and has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy, pursuant to 8 C.F.R. § 103.5(a)(3), in concluding his delay was not reasonable and beyond his control. The Petitioner therefore has not established that our prior decision was incorrect based on the evidence of record at the time of our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

---

they reach”); 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).