



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

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

In Re: 22717839

Date: NOV. 23, 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 a spouse of an abusive 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 I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition). We dismissed a subsequent appeal. The matter is now before us on motion to reopen.<sup>1</sup> On motion, the Petitioner submits new evidence and asserts her eligibility for the classification sought. Upon review, we will dismiss the motion to reopen.

## I. LAW

A motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Petitioners are “encouraged to submit primary evidence whenever possible,” but may submit any relevant, credible evidence in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). USCIS determines, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

## II. ANALYSIS

The Petitioner filed her VAWA petition in January of 2019 indicating that she married D-O-,<sup>2</sup> a U.S. citizen, in [REDACTED] 2002. The Director denied this VAWA petition, concluding that the Petitioner had not shown that she entered into the marriage with D-O- in good faith, as required at section 204(a)(1)(A)(iii) of the Act. In our prior decision, incorporated here by reference, we adopted and

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<sup>1</sup> We note that on the Form I-290-B, Notice of Appeal or Motion, the Petitioner indicated that she is filing a combined motion to reopen and to reconsider. However, the brief indicates that the Petitioner is filing a motion to reopen, and we will treat it accordingly.

<sup>2</sup> We use initials to protect the identities of the individuals in this case.

affirmed the Director's decision. We acknowledged the Petitioner's argument that evidence in the record below established that she entered into her marriage with D-O- in good faith but concluded that the Petitioner's argument and evidence submitted on appeal was not sufficient, when considering the record in its totality, to establish by a preponderance of the evidence that she entered into her marriage with D-O- in good faith.<sup>3</sup>

On motion to reopen, the Petitioner submits a personal statement and explains that she had not previously addressed her marriage because it was difficult for her to do so. In this statement, the Petitioner describes her marriage to D-O- marriage as "impulsive" and explains that there was no wedding party, that D-O- chose the wedding location, and that none of his friends attended their wedding. The Petitioner also lists where they lived and activities that they did together, such as roller blading and watching movies at home. As we note above, while we consider any credible evidence, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Further, it is the Petitioner's burden to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369 at 375.

Here, the statement on motion briefly discusses activities and residences during the Petitioner's marriage. When considered with the record in its entirety, however, the Petitioner does not meet her burden to demonstrate good faith marital intent by a preponderance of the evidence. The statement she provides on motion lacks detailed probative statements describing her courtship with D-O-, their shared experiences prior to and during marriage, and other relevant details pertaining to their marital relationship. As the evidence on motion, considered with the totality of the record below, is not sufficient to establish by a preponderance of the evidence, the intention to establish a life with D-O-, the Petitioner has not met her burden of showing she entered into marriage with her U.S. citizen spouse in good faith, as section 204(a)(1)(A)(iii)(I)(aa) of the Act requires.

### III. CONCLUSION

The Petitioner has not offered documentary evidence of new facts demonstrating her eligibility for the classification sought. She therefore has not satisfied the regulatory requirements for a motion to reopen found at 8 C.F.R. § 103.5(a)(2).

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

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<sup>3</sup> In our decision, we also noted that, although the Petitioner indicated on both her VAWA petition and her Form I-485 adjustment of status application that they married on October 25, 2002, the marriage license in the record indicated that they were married on [REDACTED] 2002. On motion, the Petitioner explains that she indicated a marriage date of October 25 because that was the date that the marriage certificate was issued.