U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26244915

Date: MAY 24, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused spouse of a lawful permanent resident of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition for preference classification rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of Lawful Permanent Resident (VAWA petition), concluding that the record did not establish the Petitioner resided with his spouse or entered into a good faith marriage with him. We dismissed a subsequent appeal. The matter is now before us on motion to 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 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)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision, which we incorporate here by reference. In our prior decision, we adopted and affirmed the Director's decision that the Petitioner did not establish he resided with O-I-[1], his spouse.[2] We mentioned the Petitioner married O-I- in [redacted] 2018 and his claim that he lived with O-I- from June 2018 to December 2018. We addressed the lack of sufficient documentation to establish residence with O-I- as the Act and regulations require. Specifically, we noted the addition of O-I- as a resident on the Petitioner's lease,

[1] We use initials to protect the identities of the individuals in this case.

[2] Since this issue was dispositive of the Petitioner's appeal, we declined to reach and reserved his appellate arguments that he married O-I- in good faith. As we are dismissing the Petitioner's motion on the issue residence, we will not address his arguments on motion that he married O-I- in good faith.

after O-I- purportedly had moved out, did not establish residence together. Furthermore, we determined the Petitioner's friend's statement regarding the Petitioner and O-I- living together had limited probative value as it was general in nature, lacked specific dates or details, and did not provide any description of the actual residence evincing the Petitioner's life there with O-I-. Last, the untranslated and undated letters addressed to O-I- at the Petitioner's address in [redacted] Florida, and the marriage certificate referencing two separate addresses for the Petitioner and O-I-, did not establish that O-I- actually resided with the Petitioner. In support of our determination, we mentioned that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home . . . while continuing to maintain a general place of abode or principal dwelling place elsewhere." Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996).

On motion, the Petitioner states the U.S. Citizenship and Immigration Services (USCIS) Policy Manual only requires the Petitioner to have resided with O-I- at any time in the past and he can prove residence with O-I- even if for a short period or prior to their marriage.[3] Next, the Petitioner claims that his due process rights were violated as little to no weight was given to his time residing with O-I- prior to their wedding. In our prior decision, we addressed the evidence of residence with O-I- submitted by the Petitioner, including the entire period of their claimed residence from June 2018 to December 2018, and applied the relevant law correctly in making our determination that he did not establish he ever resided with O-I-. The Petitioner has not established our previous decision was based on an incorrect application of law or policy and was incorrect based on the evidence in the record at the time of the decision. Consequently, the Petitioner has not met the applicable requirements for a motion to reconsider. The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

[3] The Petitioner appears to be referencing 3 *USCIS Policy Manual* D.2(F)(1), https://www.uscis.gov/policymanual.