



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

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

In Re: 28103348

Date: SEP. 19, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen)

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative 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 Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen) (VAWA petition), and we summarily dismissed the Petitioner's subsequent appeal. The matter is now before us on combined motions 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 motions.

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)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The Petitioner filed her VAWA petition in March 2020, which was denied by the Director in August 2022. The Petitioner then filed her appeal in September 2022. In January 2023, we summarily dismissed the Petitioner's appeal because "it did not identify specifically any erroneous conclusion of law or statement of fact in the unfavorable decision," as required. 8 C.F.R. § 103.3(a)(1)(v). In our decision, incorporated here by reference, we also advised the Petitioner that, although she indicated on her Form I-290B, Notice of Appeal or Motion (Form I-290B), that she would submit a brief and/or additional evidence within 30 days, we had not received either. The Petitioner now files combined motions to reopen and reconsider our summary dismissal.

On motion, the Petitioner contends that the summary dismissal of her appeal was incorrect. The Petitioner asserts, through counsel, that her brief was “submitted to the USCIS Vermont Service Center on October 26, 2023 [*sic*] and received there on October 28, 2023 [*sic*]” and attached are “copies of the [United States Postal Service (USPS)] Priority Mail label and of the tracking and delivery confirmation.” In support of her assertion, the Petitioner submits the documents described, as well as a copy of the appeal brief.

Although the Petitioner claims to provide evidence that she attempted to file her brief in support of the appeal, the documentation submitted on motion contains inconsistencies. The USPS Priority Mail label the Petitioner claims is associated with the mailing of her brief lists a tracking number of [REDACTED]. However, the tracking and delivery confirmation the Petitioner claims is related to that mailing lists a tracking number of [REDACTED]. Further, in researching the tracking number associated with the USPS Priority Mail label, the USPS tracking system indicates “label created, not yet in system.”

Even if the discrepancies outlined above were resolved, the Petitioner indicates, on motion, that she did not send the brief directly to the AAO’s mailing address. The instructions for the Form I-290B provide the following mailing instructions for Petitioners who file a brief within 30 days of filing an appeal: “Any brief and/or evidence submitted after you file Form I-290B must be sent directly to the AAO, even if the appeal has not yet been transferred to the AAO. For the AAO’s mailing address, visit www.uscis.gov/aao.” Form I-290B, Instructions for Notice of Appeal or Motion, <https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf> (Dec. 2019 ed.), at 6 (Form I-290B Instructions); *see also* 8 C.F.R. § 103.2(a)(1) (providing that “[e]very form, benefit request, or other document must be submitted ... and executed in accordance with the form instructions” and that a “form’s instructions are . . . incorporated into the regulations requiring its submission”). Absent evidence demonstrating that the Petitioner followed these instructions and mailed her brief to the correct mailing address, she has not provided new facts or new evidence that would overcome our decision to summarily dismiss her appeal. Accordingly, the motion to reopen will be dismissed.

We will also dismiss the Petitioner’s motion to reconsider because she has not demonstrated that the summary dismissal of her appeal was incorrect based on the evidence of record at the time of the initial decision. Additionally, she does not claim that our summary dismissal decision was based on an incorrect application of law or policy. For the reasons discussed, our summary dismissal decision was consistent with USCIS policy and the regulation at 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner has not satisfied the requirements for a motion to reopen or a motion to reconsider. Accordingly, we will dismiss both motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.