U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17536062

Date: APR. 4, 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 I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding the Petitioner had previously engaged in marriage fraud, thus barring the approval of her petition. We subsequently dismissed the Petitioner's appeal, concluding that there was substantial and probative evidence that the Petitioner had engaged in marriage fraud. The matter is now before us on a motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

A motion to reconsider must establish that our 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The Petitioner contends that "the derogatory evidence in this case does not truly rise to the 'substantial and probative' standard of proof required" for section 204(c) of the Act, 8 U.S.C § 1154(c), to bar the approval of his petition. She argues that we gave undue weight to her ex-husband's statement that he had received $2,000 to marry the Petitioner and was to be paid another $2,000 after successfully completing the immigration interview. According to the Petitioner, due process principles should apply here and she did not have the opportunity to rebut her ex-husband's statement. She also claims that although we discussed the Petitioner's psychological evaluation, we did not consider all of the medical evidence in the record, including the psychologist's finding that the Petitioner married her ex-husband in good faith.

We incorporate the Director's decision and our previous decision here, which thoroughly summarized and analyzed, among other things: the derogatory evidence from her ex-husband, S-O-[1]; the

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

Petitioner's Motion to Change Venue in which she admitted to the charges in a Notice to Appear, including that her marriage to S-O- was made for the purpose of procuring her admission to the United States as an immigrant; the Petitioner's statements which contained inconsistencies and provided little insight regarding her intent at the time she married S-O-; third-party affidavits which provided very few specific, probative details addressing the couple's marriage; and banking documents which were insufficient to show that the couple commingled funds or shared financial responsibilities at a common residence. Although the Petitioner may disagree with our previous decision, she does not make any new arguments, nor does she contend that our last decision was based on an incorrect application of law or policy. We note that in 2016, the Board of Immigration Appeals reached the same conclusion that there was substantial and probative evidence the Petitioner engaged in marriage fraud, upholding the denial of a Form I-130 relative petition filed on her behalf. We further note that there are no due process rights implicated in the adjudication of an immigrant application such as a VAWA petition. *See, e.g., Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *Azizi v. Thornburgh*, 908 F.2d 1130, 1134 (2d Cir. 1990) (explaining that although the Fifth Amendment protects against the deprivation of property rights when Congress has granted those rights to foreign nationals, there is no "inherent property right in an immigrant visa").[2]

The Petitioner does not cite any pertinent precedent decisions to demonstrate that we misapplied the law or USCIS policy. In addition, the Petitioner has not established that our prior decision was incorrect based on the evidence in the record at the time of the initial decision. Therefore, the submission does not meet the requirements of a motion to reconsider, as specified in 8 C.F.R. § 103.5(a)(3). Accordingly, the petition remains denied.

ORDER: The motion to reconsider is dismissed.

[2] Even if due process rights were implicated here, the Petitioner has had ample opportunities to rebut S-O-'s allegations, including but not limited to, in her response to the Director's Notice of Intent to Deny the petition, in her appeal, and now on motion. As we explained in our previous decision, the Petitioner was made aware of and had opportunities to rebut the derogatory information in the record.