



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

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

In Re: 22043997

Date: AUG. 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). We dismissed the Petitioner's appeal. The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner reasserts his eligibility for VAWA classification. Upon review, we will dismiss the motions.

I. LAW

Section 204(a)(1)(A)(iii)(I)(bb) of the Act provides that an individual who is the spouse of a U.S. citizen may self-petition for immigrant classification if they demonstrate, among other requirements, that they were "battered or subjected to extreme cruelty" perpetrated by the spouse during the marriage. This term includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(iv).

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 (AAO 2010). Although U.S. Citizenship and Immigration Services (USCIS) must consider "any credible evidence" relevant to a VAWA petition, we determine, in our sole discretion, the credibility of and weight given to that evidence. See section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 the above requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Petitioner, a native and citizen of India, entered the United States in October 2013 on a visitor visa. He married C-R-,¹ a U.S. citizen in [] 2016. He filed the instant VAWA petition in August 2018 based on this marriage.

In our prior decision on appeal, incorporated here by reference, we concurred with the Director's determination that the Petitioner had not established, by a preponderance of the evidence, that he had been battered by or subjected to extreme cruelty by C-R-. We noted that the Petitioner's personal statement described the deterioration of his marriage due to C-R-'s infidelity and other actions and ultimate abandonment. Additionally, we found that the Petitioner's statement, which indicated that C-R- pushed and punched him shortly before her departure, and letters of support from his doctor and several friends did not support a finding that he was abused or exploited by C-R-, or that C-R- engaged in actions evidencing an overall pattern of violence or extreme cruelty. As a result, we concluded that the Petitioner did not establish that C-R- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

A. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). Generally, a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. A motion to reconsider is based on the existing record and applicants may not introduce new facts or new evidence relative to their arguments. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006).

The Applicant argues that his previously submitted evidence documenting physical, economic and mental abuse he suffered at the hands of C-R- was sufficient to establish that he was battered or subjected to extreme cruelty by her. As explained in our prior decision, the Petitioner's personal statement described an unhappy marriage in which C-R- assaulted him on two occasions,² had an affair with another man, disclosed her pregnancy by another man in front of the Petitioner's family and friends, lent money to her family without consulting him beforehand, and ultimately abandoned him. The statement described the deterioration of his marriage due to C-R-'s infidelity and other actions, but this did not amount to an overall pattern of violence or extreme cruelty. Moreover, previously submitted letters of support from the Petitioner's friends provided accounts of several verbal disagreements between the Petitioner and C-R- but did not support a finding that the Petitioner was abused or exploited by C-R-.

The Petitioner contends that we erred in concluding that he was only subjected to verbal violence and further argues that he was previously abandoned by another spouse—a specific circumstance which we

¹ Initials are used to protect the individual's privacy.

² The Petitioner contends that a second physical altercation with C-R-'s partner and brother is attributable to C-R- because she gave his money to her family members without his permission.

should have taken into account in adjudicating his petition. He references USCIS policy defining battery and extreme cruelty, and argues that he was battered when C-R- pushed and punched him and subjected to extreme cruelty when C-R- humiliated and later abandoned him. The record indicates that we considered the Petitioner's assertions that C-R- pushed and punched him, but concluded that he was not the victim of physical battery for VAWA purposes. We acknowledge that pushing and punching may constitute behavior amounting to battery. However, the relevant evidence, including the Petitioner's one-sentence description of this incident, is insufficient to establish that C-R- battered him. Furthermore, while we do not seek to diminish the loneliness and depression the Petitioner experienced due to C-R-'s conduct, he has not demonstrated that C-R-'s actions constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).³ Furthermore, the Petitioner's prior abandonment by his first spouse, while unfortunate, is not relevant to whether C-R-'s actions towards him constituted extreme cruelty.

Upon review, we find that the previously submitted evidence, including the Petitioner's statement and letters of support from his doctor and several friends, does not establish that C-R- abused or exploited the Petitioner or engaged in actions evidencing an overall pattern of violence. Based on the foregoing, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy.

B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. With the present motion, the Petitioner submits an updated letter from his doctor. We have reviewed the updated letter from the Petitioner's doctor and conclude that it does not state new facts supported by documentary evidence. Rather, the updated letter reiterates that he is treating the Petitioner for a mental health disorder caused by his marriage to C-R-. Additionally, the Petitioner's doctor confirms that he is treating the Petitioner's mental health symptoms including loneliness, depression and insomnia with medication and counseling. While this letter further attests to the Petitioner's mental health treatment, in addition to the previously submitted letter in the record, it does not provide new facts relevant to the issues raised on motion to overcome our previous decision. As a result, the Applicant has not satisfied the requirements for a motion to reopen found at 8 C.F.R. 103.5(a)(2) and we will dismiss the motion to reopen.

³ 8 C.F.R. § 204.2(c)(1)(vi) states:

For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

III. CONCLUSION

The Petitioner has not demonstrated, by a preponderance of the evidence, that he was battered or subjected to extreme cruelty by C-R-, as he has not established legal error in our prior decision and has not provided new facts on motion to establish that he meets this requirement.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.