



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

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

In Re: 23054195

Date: DEC. 20, 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 (the Director) denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition) and dismissed a subsequent motion to reopen and reconsider. We dismissed the Applicant's appeal, and the matter is now before on us a motion to reopen and reconsider. The Applicant bears the burden of establishing eligibility for the requested waiver by a preponderance of evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate our prior decision's misapplication of law or U.S. Citizenship and Immigration Services (USCIS) policy based on the evidence at the time of the decision's issuance. 8 C.F.R. § 103.5(a)(3).

We may grant motions that meet these requirements and establish eligibility for the requested benefit. 8 C.F.R. § 103.5(a)(1) (allowing USCIS to reopen or reconsider decisions "for proper cause shown"). Conversely, we must dismiss motions that do not meet applicable criteria. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The record shows that the Petitioner is a native and citizen of Israel who in [] 2015 married his U.S. citizen spouse, L-Y-E-,¹ with whom he claims he resided from July 2015 until November 2016. The couple divorced in [] 2017. The Petitioner filed his VAWA petition in March 2017. In support of his petition he submitted personal affidavits, statements of support from friends, psychological evaluations, financial records, civil documents, and photographs.

The Director denied the VAWA petition, finding that the Petitioner did not establish he resided with his spouse and entered into their marriage in good faith, and dismissed a subsequent motion to reopen

¹ We use initials to protect individual identities.

and reconsider, concluding that additional evidence demonstrated the Petitioner's joint residence with his spouse but was insufficient to establish he entered into the marriage in good faith. The Director detailed inconsistencies between the Petitioner's claims and other evidence, concluded the Petitioner was not a reliable witness, and determined that psychological evaluations provided no additional information, that third-party affidavits lacked probative detail, that submitted photographs were not sufficient to show he married with the intent of creating a life together, and that other evidence did not overcome the discrepancies to establish the Petitioner entered marriage in good faith. The Director referred to a USCIS site visit to the Petitioner's claimed residence that revealed he was not living there even though he responded to officers over the phone that he lived there, and then explained that his wife moved to Minnesota while he remained with a friend in [redacted] to join her later. The Director pointed out that the Petitioner did not initially disclose a change of residence to officers and other statements were inconsistent with his claims regarding that time period.

In our decision dismissing the appeal, incorporated here by reference, we determined that given discrepancies in the record the Petitioner did not demonstrate that he entered into marriage in good faith. We observed that a USCIS investigation showed that during the Petitioner's claimed relationship with L-Y-E- he was residing with another woman, T-R-, in New York and continued residing with her in Nevada. We noted that during a USCIS site visit where the Petitioner claimed to live with L-Y-E- a male answered the door and indicated that he lived there but was not familiar with the Petitioner. We noted that the Petitioner claimed relationships with the children of L-Y-E- but during a USCIS interview he did not know the names of their schools, was not aware of their regular activities, and was unfamiliar with the spelling of a daughter's name. We observed that the Petitioner asserted that he began to see the controlling side of L-Y-E- after he proposed marriage, but a psychological evaluation indicated rather that he had responded to indications of her controlling side by proposing to her. We determined that discrepancies diminished the evidentiary weight of the Petitioner's affidavits, those in his support, and a psychological evaluation, while photographs and financial documentation were inadequate to establish good faith marriage given deficiencies in the record.

On motion, the Petitioner submits an updated personal affidavit, an updated letter of support from a friend, B-I-, a copy of a previously submitted photograph labeled as taken when L-Y-E- had an ultrasound, and articles about people remaining in abusive relationships. The Petitioner argues, through counsel, that the Director's denial and our dismissal failed to address legal arguments, raised only minor inconsistencies, and did not consider the totality of evidence where Congress expressed the intent for greater sensitivity toward the plight of battered spouses. He argues that when considered in its entirety the evidence makes clear that the marriage was *bona fide* at its inception.

The Petitioner concedes that he lived with T-R- in New York and in [redacted] before L-Y-E-, reiterates his contention that affidavits and evidence show he used the residence in [redacted] for business, and argues his continued residence with his abuser indicates the marriage was *bona fide*. The Petitioner maintains that friends offered affidavits that they viewed his relationship with his former spouse on multiple occasions and that his newly submitted affidavit and that of B-I- explain the marriage ended when L-Y-E- miscarried as the relationship then quickly deteriorated and she left him for another man. The Petitioner asserts that he previously discussed L-Y-E-'s miscarriage, her infidelity, and the couple's resulting breakup that were also detailed in the psychological reports of multiple interview sessions.

In his affidavit submitted on motion, the Petitioner claims that he and T-R- were never in a romantic relationship, that she attended his wedding, and that she frequently visited their apartment. He reiterates claims that he resided with T-R- where he used a room for business but spent most days at L-Y-E-'s house getting to know her children before moving in. He recalls that after L-Y-E- miscarried she became depressed, began drinking, and the marriage fell apart, and after a friend visited, she moved to Minnesota but wanted the Petitioner to remain in [REDACTED] while she got settled. The Petitioner states that L-Y-E- then told him the marriage was over and moved in with the friend who had visited. The Petitioner states that he now believes the USCIS site visit triggered L-Y-E- to end the marriage and contends that USCIS officers misunderstood his explanation about the move to Minnesota as he frequently thinks in Hebrew and translates to English, and that he did not then know of L-Y-E-'s plans.

In his updated affidavit, B-I- states that he had dinner with the couple multiple times at their home, and even though he did not personally like L-Y-E- he was a longtime friend of the Petitioner and believes the marriage was legitimate. He recalls learning that L-Y-E- miscarried and then witnessing the Petitioner's sorrow with the loss and L-Y-E- leaving him for another man. B-I- also explains that the spelling of the daughter's name differs when translated from Hebrew to English.

On motion, the Petitioner has not overcome our prior decision dismissing his appeal of the Director's denial. The Petitioner repeats claims and provides explanations that were previously presented and addressed in prior decisions. The updated affidavit from the Petitioner does not contain information not previously offered, does not give additional details about the couple's relationship, and does not provide insight regarding his intent at the time of marriage. The photograph alleging to show L-Y-E- following an ultrasound was already part of the record, and the Director indicated in a 2017 Notice of Intent to Deny the Form I-130, Petition for Alien Relative, filed by L-Y-E- on the Petitioner's behalf, that the record contained no supporting medical documentation about the pregnancy. Although the Petitioner continues to contend that the marriage fell apart following L-Y-E-'s miscarriage he has yet to address the deficiency by providing supporting evidence. Although the Petitioner also submits articles focusing on abusive relationships, the information is general and does not specifically address the issue here, which is whether the Petitioner entered into marriage in good faith. Accordingly, we will dismiss the motion to reopen as he offers no new facts.

The Petitioner has also not demonstrated that our prior decision was based on an incorrect application of law or USCIS policy or that our decision was incorrect based on the evidence in the record at the time of the decision. Accordingly, he remains ineligible for classification as the abused spouse of a U.S. citizen because he has not established that he entered into marriage in good faith. The record overall lacks persuasive evidence that the Petitioner married L-Y-E- in good faith. We will therefore dismiss the Applicant's motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.