U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23859400

Date: DEC. 22, 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 that the Petitioner was not eligible for immigrant classification because he had been convicted of an aggravated felony, and therefore, could not establish his good moral character, as required. We dismissed a subsequent appeal and a motion to reconsider. The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner asserts that he is eligible for immigrant classification under the VAWA. Upon review, we will dismiss the motion.

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 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. Id. at § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

Immigrant classification under the VAWA provisions may be granted to an individual subjected to battery or extreme cruelty by his or her U.S. citizen spouse if that individual demonstrates, among other requirements, that they are a person of good moral character. Section 204(a)(1)(A)(iii) of the Act. No person shall be found to be a person of good moral character if they have been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, at any time. Section 101(f)(8) of the Act; 8 C.F.R. § 204.2(c)(1)(vii). An offense that involves fraud or deceit in which the loss to the victim(s) exceeds $10,000 is an aggravated felony. Section 101(a)(43)(M)(i) of the Act.

In our prior decisions, incorporated here by reference, we determined that because the Petitioner has been convicted of an aggravated felony under section 101(a)(43)(M)(i) of the Act, a finding not contested by the Petitioner, he cannot establish good moral character, as required for immigrant classification as a VAWA self-petitioner.[1] We also noted that there is no waiver available for an

[1] The record reflects that the Petitioner pled guilty to possession of 15 or more unauthorized access devices (credit cards) with intent to defraud, in violation of 18 U.S.C. § 1029(a)(3) and (2), resulting in a financial loss to credit card companies in the amount of approximately $97,300.

aggravated felony conviction with respect to establishing good moral character pursuant to section 101(f)(8) of the Act. In addition, we explained that contrary to the Petitioner's contention that he is eligible for relief under section 212(h) of the Act, which provides a waiver for crimes involving moral turpitude, the Petitioner's conviction for credit card fraud was both a crime of moral turpitude, a ground of inadmissibility, as well as an aggravated felony.[2] As such, although he may be statutorily eligible to apply for a discretionary waiver for his ground of inadmissibility under section 212(h), he remains unable to establish his good moral character as a result of his conviction for an aggravated felony under section 101(f)(8) of the Act.

On motion, the Petitioner has not presented new facts, cited any binding precedent decisions or other legal authority establishing that our prior decisions incorrectly applied the pertinent law or agency policy, or established that our prior decisions were incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3). Instead, the Petitioner reasserts that he is eligible for relief under section 212(h) of the Act, an issue not determinative of his eligibility for immigrant classification under the VAWA.[3] Accordingly, the motion to reopen and reconsider is dismissed and the VAWA petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] In 2003, an Immigration Judge found that the Petitioner's conviction was for an aggravated felony, a finding upheld by the Board of Immigration Appeals in 2003, and subsequently by the U.S. Court of Appeals for the Ninth Circuit. See [redacted] ("The crime was also an aggravated felony under 8 U.S.C. § 1101(a)(43)(M), because it involved fraud in which the loss to the victims exceeded $10,000.").

[3] We do not address the Petitioner's remaining arguments made on motion because they are predicated on his eligibility for relief under 212(h) of the Act.