



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

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

In Re: 22836278

Date: NOV. 21, 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 in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Petitioner's Form I-360, Petition for Abused Spouse of U.S. Citizen (VAWA petition), concluding that the record did not establish the Petitioner's eligibility for classification as an immediate relative and did not establish the Petitioner's good moral character. We dismissed the Petitioner's subsequent appeal, concluding that while the Petitioner had established her eligibility for classification as an immediate relative, she had not established her good moral character. We then dismissed the Petitioner's combined motion to reopen and reconsider our decision. The matter is now before us on second combined motion to reopen and to reconsider. Upon review, we will grant this motion to reopen and sustain the appeal. The motion to reconsider is moot.

I. LAW

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. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates they entered into the marriage in good faith and were battered or subjected to extreme cruelty perpetrated by the spouse. Section 204(a)(1)(A)(iii)(I) of the Act. The petitioner must also show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). While we must consider any credible evidence relevant to the VAWA self-petition, we determine, in our sole discretion, what evidence is

credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner, a native and citizen of Egypt, filed the instant VAWA petition based on her marriage to J-H-.¹ The Director denied this VAWA petition, concluding that because the record did not establish the legal termination of the Petitioner's previous marriage in Egypt, the Petitioner had not demonstrated a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immediate relative classification based on that relationship. The Director further determined that the Petitioner had not satisfied the evidentiary requirements to establish her good moral character.²

The Petitioner then appealed the Director's decision to us and we subsequently dismissed the appeal. In our decision, incorporated here by reference, we concluded that the Petitioner demonstrated a qualifying familial relationship as the spouse of a U.S. citizen and corresponding eligibility for immediate relative classification as required under section 201(b)(2)(A)(i) of the Act. However, we determined that the record lacked evidence sufficient to establish the Petitioner's good moral character as she did not submit a personal affidavit attesting to her good moral character and the record was otherwise insufficient to meet this requirement.

The Petitioner then filed a combined motion to reopen and to reconsider our dismissal of her appeal and submitted her personal affidavit as primary evidence of good moral character. The Petitioner also provided her criminal background check from Egypt indicating "no recorded criminal sentences." However, as we noted in our decision dismissing the prior combined motion, incorporated here by reference, the record nonetheless lacked sufficient evidence of her good moral character while residing in Michigan. We also noted that the Petitioner had not established that our prior decision was in error based upon evidence in the record at the time, or that we incorrectly applied law or USCIS policy to that decision, and therefore had not satisfied the requirements of a motion to reconsider.

On second motion to reopen, the Petitioner newly submits documentation from the State of Michigan Department of Police [redacted] identifying the Petitioner by name and birth date, and stating that "no Michigan criminal history information exists on file meeting this state's dissemination criteria regarding this individual... [b]ased upon a fingerprint comparison to criminal files completed on 4/21/2022." In totality, the record now establishes, by a preponderance of the evidence, the Petitioner's good moral character. We will grant the Petitioner's motion to reopen as she has now submitted documentary evidence of new facts sufficient, when considered with the record in its entirety, to establish her good moral character. The Petitioner's motion to reconsider is moot.

III. CONCLUSION

The Petitioner submits new evidence on motion sufficient to establish, by a preponderance of the evidence, her good moral character as required at section 204(a)(1)(A)(iii)(II) of the Act. We will

¹ Initials are used throughout this decision to protect the identity of the individual.

² In this decision, the Director determined that the Petitioner had established that she satisfied the remaining requirements for classification as an abused spouse of a U.S. citizen under section 204(a)(1)(A)(iii) of the Act.

therefore grant her motion to reopen. The Petitioner has also demonstrated a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immediate relative classification based on that relationship under section 201(b)(2)(A)(i) of the Act. As she has established her eligibility for classification as an abused spouse of a U.S. citizen under section 204(a)(1)(A)(iii) of the Act, we will sustain her appeal.

ORDER: The motion to reopen is granted, and the appeal is sustained.