U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25501177

Date: APR. 6, 2023

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 did not establish he married his spouse in good faith and resided with her, as required. We subsequently dismissed an appeal concluding that the Petitioner did not meet his burden of establishing that he jointly resided with his spouse and reserved the issue of whether the Petitioner entered into the marriage in good faith. The matter is now before us on a motion to reopen and reconsider. The Applicant submits a brief, his affidavit, affidavits from a real estate agent and a car dealer, a letter from a tax preparer and a copy of rental applications for himself and his brother. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). On appeal, the Petitioner submits a letter asserting her eligibility. Upon review, we will deny the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original [application/petition]. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

The Petitioner has not submitted evidence of new facts pertaining to his eligibility, and he has not established that our previous decision was based on an incorrect application of law or USCIS policy, as required. *See* 8 C.F.R. § 103.5(a)(2) and (3). In the brief, the Petitioner argues that the affidavit from the real estate agent shows joint residence, the letter from the tax preparer confirms that the Petitioner and his spouse filed joint taxes for 2016 and the discrepancy in the paperwork was the result of the Petitioner not being an accountant and not being versed on how taxes work. The Petitioner attributes the discrepancies in his statements to his diagnosis of Post-Traumatic Stress Disorder and Major Depressive Disorder and the motor vehicle accident which severely impaired his ability to properly remember details regarding his past. In addition, he claims the battery, abuse or extreme cruelty he experienced contributed to his memory loss. In the brief the Petitioner argues that he did not have the financial resources to obtain as many documents "as the Service expected him to have,"

and that we have placed an unreasonably and unfairly high burden on the Petitioner to produce certain documents. Furthermore, the Petitioner argues that he and his spouse were living their lives for themselves and not worried about USCIS and any type of filing. However, although the Petitioner submits affidavits from his real estate agent and car dealer; copies of rental applications; and a letter from his tax preparer, these documents are insufficient to overcome our prior determination that the Petitioner did not establish by a preponderance of the evidence that he jointly resided with his spouse.

In his affidavit, the Petitioner again contends that he entered the United States when he was 17 years old, and he did not have anyone to guide him on matters such as car insurance or the requirements of updating his address when he moved to a new one. He explains his financial challenges as a minimum wage worker, and the effects a car accident had on his memory. While we are sympathetic to the challenges the Petitioner has faced, these arguments are not new. On motion, the Petitioner submits an affidavit from a car dealer who states that the Petitioner and his spouse bought a Nissan Altima from him, and they were an "ovious [sic] couple." The letter has little probative value as it lacks details that would support the conclusion that the Petitioner and his spouse shared a residence together. Similarly, the letter from the tax preparer does not explain the discrepancies in the record regarding the Petitioner's 2016 joint tax return. The tax preparer wrote that he filed the 2016 tax returns for the Petitioner and his spouse "on [sic] February 2017 as [sic] married couple." However, this letter does not explain why the unsigned tax return was initially dated December 2017, why the spouse's first name is spelled incorrectly, or why the updated 2016 tax return submitted in response to the request for evidence was dated March 2017 if it was filed "on [sic] February 2017" as the letter states. The affidavit from the real estate agent states that the Petitioner and his spouse resided at [redacted] from December 2016 to July 2017, although the Petitioner previously indicated that he and his spouse resided there from November 2016 through March 2017.

We note that, among other things, the Director's decision and our prior decision discussed at length the evidence submitted including: car insurance policies; tax returns; letters of support; photographs; and a psychological evaluation. Considering all of the evidence in its entirety, the Petitioner has not established that he resided with his spouse.[1] In conclusion, the Petitioner has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision. Accordingly, the Petitioner has not met his burden of establishing eligibility for immigration classification under VAWA.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

[1] Because the Petitioner did not establish that he resided with his spouse, which is dispositive of his appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining eligibility requirements forming the basis of the Director's denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).