U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25428310

Date: APR. 27, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits. The Director of the Vermont Service Center revoked the approval of the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), and we dismissed the Petitioner's subsequent appeal, concluding that the Petitioner did not establish that she is a person of good moral character, as required. The matter is now before us on a combined motion to reopen and reconsider. On motion, the Petitioner submits additional evidence and asserts again that the record demonstrates her eligibility for the benefit sought. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification under VAWA if the petitioner demonstrates, among other requirements, that they are a person of good moral character. Section 204(a)(1)(A)(iii) of the Act. A VAWA self-petitioner's good moral character is assessed under section 101(f) of the Act. 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act enumerates grounds that will automatically preclude a finding of good moral character including, as relevant here, where the petitioner has given false testimony for the purpose of obtaining any benefits under the Act. Section 101(f)(6) of the Act.

The Petitioner, a citizen of Liberia, filed her VAWA petition in February 2017 based on her marriage to her U.S. citizen spouse. As discussed in our prior decision dismissing the Petitioner's appeal, the Director revoked the approval of the VAWA petition, concluding that the Petitioner provided false

testimony in order to procure an immigration benefit, which barred her from a finding of good moral character as indicated in section 101(f)(6) of the Immigration and Nationality Act (the Act) (providing that "[n]o person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was . . . one who has given false testimony for the purpose of obtaining any benefits under" the Act). The Director noted in the revocation that during the Petitioner's nonimmigrant visa interview in November 2014, she told the consular officer that she had two children, but later indicated, during her oral testimony in regard to her Form I-485, Application to Register Permanent Residence or Adjust Status (From I-485), in February 2016, that she only had one child and provided false testimony to the consular officer at her nonimmigrant visa interview as she "did not want to lose the opportunity of visiting family members and friends." On appeal, the Petitioner explained that although the two children were not her biological children, she had been caring for them after her uncle's death and did not know she should not claim them as her own during the interview. We concluded that the Petitioner's explanation regarding the two children was reasonable and, accordingly, not false testimony as contemplated by section 101(f)(6) of the Act. However, we further concluded that the Petitioner did provide false testimony during her November 2014 nonimmigrant visa interview when she was expressly asked if she was currently pregnant, and she stated that she was not, and when confronted with this discrepancy in the Director's notice of intent to revoke (NOIR), she acknowledged that she denied her pregnancy because she "did not want to lose the opportunity of visiting family members and friends" during her vacation. While the Petitioner asserted in response to our notice of intent to deny (NOID) that she did not provide a false statement to obtain an immigration benefit during her November 2014 nonimmigrant visa interview and that she "did not know or believe that the immigration officer would deny her application if she were pregnant," we determined that her assertions were contradicted by her previous statements that she denied her pregnancy because she "did not want to lose the opportunity of visiting family members and friends" during her vacation and, thus, concluded that the Petitioner did not sufficiently explain this discrepancy, and the record supported the finding that she gave false testimony for the purpose of obtaining admission as a nonimmigrant, a benefit under the Act.[1]

On motion to reconsider, the Petitioner does not cite any error in our application of law or USCIS policy in our previous decision, nor has she established our prior decision was in error based on the record at the time. The Petitioner submits, on motion to reopen, a brief, a new statement, and a print-out from the Center for Disease Control and Prevention (CDC) regarding the Ebola outbreak in West Africa during 2014-2016. On motion, the Petitioner contends that her testimony regarding her pregnancy at the nonimmigrant visa interview was given for purposes other than obtaining benefits under the Act and, therefore, is not a bar to establish good moral character. The Petitioner asserts that she denied her pregnancy during the visa interview to protect her unborn child. She recalls that she "made that statement with the aim of providing better hospital, medical care, and sanitation for her unborn child while Liberia was fighting Ebola and pregnant mothers and their children were dying in unimaginable numbers." The Petitioner cites to *Matter of L-D-E-*, 8 I&N Dec. 399, 402 (BIA 1959) in support of her assertion that the term "testimony" in section 101(f)(6) of the Act is limited to oral statements made under oath and holding that false statements in an application do not constitute testimony, and *Matter of Ng*, 17 I&N Dec. 536 (BIA 1980), and *also Matter of Bosuego*, 17 I&N Dec. 125, 130 (BIA 1979,1989), in support of her assertion that a misrepresentation will be deemed material if it tends to shut off a line

[1] We also concluded that the Petitioner is not eligible for a waiver under 212(i)(I) of the Act because she has not claimed, and the record does not establish, that the false testimony she provided was connected to the abuse she suffered.

of inquiry which is relevant to the applicant's eligibility, and which might have resulted in a proper determination that the applicant be excluded.

First, the Petitioner is correct in citing to *Matter of L-D-E-* when asserting that the term "testimony" in section 101(f)(6) of the Act is limited to oral statements made under oath. In this instance, the Petitioner provided false testimony regarding her pregnancy, under oath, during her nonimmigrant visa interview with a Consular Officer in November 2014.[2] Next, the Petitioner is incorrect on the issue of materiality. In this case, there is a distinction between an inadmissibility finding under section 212(a)(6)(C)(i) of the Act, for willful misrepresentation of a material fact, and a determination that the petitioner has not established that she is a person of good moral character pursuant to the provisions of section 101(f) of the Act. The Supreme Court has determined that the statutory bar under section 101(f)(6) applies to any oral statements made under oath by a person who has a subjective intent to obtain immigration benefits, regardless of whether the misrepresentation is material. *Kungys v. United States*, 485 U.S. 759, 780 (1988) (stating that section 101(f)(6) "denominates a person to be of bad moral character on account of having given false testimony if he has told even the most immaterial of lies with the subjective intent of obtaining immigration or naturalization benefits"). Accordingly, the Petitioner is required to establish that she is a person of good moral character under section 204(a)(l)(A)(iii)(II)(bb) of the Act, assessed pursuant to section 101(f) of the Act.

The burden of proof is on the Petitioner to establish that she is a person of good moral character. Here, the record, including the new evidence and new facts asserted on motion, is not sufficient to satisfy her burden. The Petitioner concedes on motion, and previously in response to our NOID, that she provided false testimony regarding her pregnancy during her nonimmigrant visa interview in November 2014. On motion, she indicates that she did so to protect her unborn child from possible death due to the rates at which mothers and their babies were dying while giving birth in Liberia throughout the Ebola outbreak. However, in response to our NOID, the Petitioner specifically indicated that her "pregnancy was irrelevant to her seeking entry" into the United States and that she was not trying to defraud the officer as she did not know or believe that the officer would deny her application if she were pregnant. Consequently, the Petitioner's statements in response to our NOID and now on motion further contradict her previous statements in response to the Director's NOIR where she acknowledged that she denied her pregnancy because she "did not want to lose the opportunity of visiting family members and friends" during her vacation. Based on the evidence submitted, the Petitioner has not demonstrated, by a preponderance of the evidence, that she is a person of good moral character.

Here, the Petitioner has not established legal or factual error in, and her new evidence on motion does not overcome, our prior decision, finding that she has not shown that she is a person of good moral character, as section 204(a)(l)(A)(iii)(II)(bb) of the Act requires. Accordingly, the Petitioner remains ineligible for immigrant classification under VAWA and the petition remains revoked.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] Section 504.7 of Title 9 of the Foreign Affairs Manual (FAM) provides specific guidance to Consular Officers regarding placing individuals under oath and conducting interviews. Further, 9 FAM 504.7-4(A) provides that at the outset of the interview, Consular Officers are to clarify that, after the interview is ended, the applicant will be required to swear or affirm that all statements made during the interview and on the form are true.