U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29461626

Date: DEC. 20, 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 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 of U.S. Citizen or Lawful Permanent Resident (VAWA petition), concluding that the Petitioner did not establish that she shared a residence with her U.S. citizen spouse as her principal and actual dwelling. We dismissed a subsequent appeal on the same basis. The matter is now before us on a combined motion to reopen and reconsider.[1] 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 prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We find that the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

In our prior decision to dismiss the appeal, we agreed with the Director's finding that the Petitioner did not establish by a preponderance of the evidence that she had shared a residence with her spouse, K-W-[2], or that K-W-'s home was her principal dwelling. We acknowledged the Petitioner's psychosocial evaluation submitted on appeal where the licensed social worker stated that the Petitioner told her that she lived with K-W- in [redacted] for seven days between February 2019 when he proposed,

[1] We decline the Petitioner's request for oral argument. *See* 8 C.F.R. § 103.3(b)(2).

[2] We use initials to protect the privacy of individuals.

and [redacted] 2019 when they got married. We also acknowledged the Petitioner's updated affidavit in which she reiterated that she lived with K-W- "and in sharing a residence with him, I endured all the abuse." However, despite the Petitioner's assertions, we determined that she had not established that she shared a residence with K-W-. Rather, the record supported the conclusion that the Petitioner resided in Minnesota with her three school-aged children. We further noted that although the Petitioner submitted her own affidavit, she did not submit any third-party affidavits attesting to her and her abusive spouse living together at the claimed shared address and providing probative details about visits to the residence, gatherings, dates, specific descriptions about home furnishings, belongings, neighbors, or daily routines.

On motion, the Petitioner has not submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. As we previously detailed, the Act defines a residence as a person's general abode, which means their "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Although there is no requirement that a VAWA petitioner reside with their abuser for any particular length of time, a petitioner must show that they in fact resided together. Section 204(a)(1)(A)(iii)(II)(dd) of the Act; 8 C.F.R. § 204.2(c)(1)(v). Evidence showing that the petitioner and the abusive spouse resided together may include employment records, utility receipts, school records, hospital or medical records, birth certificates of children, deeds, mortgages, rental records, insurance policies, affidavits, or any other type of relevant credible evidence of residency. 8 C.F.R. § 204.2(c)(2)(i), (iii).

With the instant motion to reopen, the Petitioner submits an updated declaration, an affidavit from an individual who states that the Petitioner and K-W- rented a room from him and said individuals residential lease, and a third-party affidavit in support of the Petitioner's contention that she resided with her U.S. citizen spouse.

On motion to reopen, the Petitioner does not offer evidence to demonstrate that she and her spouse resided together in his apartment as her primary residence. As we detailed in our decision to dismiss the appeal, the Petitioner conceded that her children resided in Minnesota and she confirms on motion that she "had to return to Minnesota from time to time in order to allow my children to complete the school year." The Petitioner does not discuss ending living arrangements in Minnesota where her children resided, moving her own belongings from Minnesota to the apartment in [redacted] while her children remained in Minnesota, or what items she purchased to establish her residence in [redacted]

Furthermore, although the Petitioner details on motion the conditions in which she found the apartment, including a mattress on the floor, a small bathroom right beside her room, and a friend that shared the apartment with her and K-W-, and states generally that she slept on the right side of the bed facing the window while K-W- slept on the left, cleaned and did the dishes after meals, watched movies and showered with K-W-, and accompanied K-W- while he worked on his rap music, she does not establish that it was her principal dwelling. While we acknowledge the statement submitted on motion from the individual that purportedly shared the apartment that the Petitioner states she resided in with K-W-, the statement is general in nature; while the individual asserts that the Petitioner and K-W- were always together and loved each other and the Petitioner cooked for everyone, she does not provide sufficient evidence to establish that the Petitioner was residing there. Nor does the residential lease submitted on motion list the Petitioner or K-W- as tenant(s).

Finally, the affidavit from the Petitioner's friend submitted on motion indicates that the Petitioner was living with her spouse and when they spoke, K-W- "would be in the household with her." However, this affidavit has limited probative value as it is general in nature, lacks specific dates or details about their interactions with the Petitioner and K-W- in the apartment they purportedly shared, and does not provide any description of the actual residence evincing the Petitioner's life there with K-W-.

With the instant motion, the Petitioner has not submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal. The motion to reopen is therefore dismissed. The Petitioner has also not established that the record demonstrates that her U.S. citizen spouse's home was the Petitioner's "general abode" or "principal, actual dwelling place." Accordingly, as the Petitioner has not established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy, the motion to reconsider is dismissed. The VAWA petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.