U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24378674

Date: FEB. 28, 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 or Child of U.S. Citizen (VAWA petition) and we dismissed a subsequent appeal of the Director's decision. The matter is now before us on motion to reconsider. Upon review, we will dismiss the motion to reconsider.

A motion to reconsider is based on an incorrect application of law or policy to the prior decision. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. 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).

In October 2017, the Petitioner filed her VAWA petition based upon her marriage to J-H-,[1] a U.S. citizen. On this VAWA petition, she attested that she resided with J-H- from June 2016 to May 2017. The Director denied her petition, concluding that the Petitioner had not established that she resided at a [redacted] CA address, and had not demonstrated her joint residence with J-H- there, as required. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1)(i). We then dismissed her appeal, concluding that although the record demonstrated she lived at the [redacted] CA residence, it did not demonstrate that J-H- resided there with her.

In our decision, incorporated here by reference, we noted that the record included a Wells Fargo letter dated after the end of the claimed shared residence ended, and a collection notice for a traffic citation, both addressed to J-H-. We acknowledged the Petitioner's argument that, because the Wells Fargo correspondence discussed insurance held during the claimed period of joint residency, it demonstrated that J-H- both received mail and resided at that address. We further recognized the Petitioner's claim that the collection notice established that California Department of Motor Vehicles had that address for J-H- in their records. However, we determined that although the record indicated that J-H- received mail at the [redacted] CA address, it did not contain evidence sufficient to establish that he resided with the Petitioner there, even when considering the affidavits from the Petitioner's relatives and

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

friends. We indicated that these affidavits contained general statements that the Petitioner resided with J-H- at the claimed shared residence. However, we noted that the Petitioner's relatives did not provide probative details of the claimed joint residence and did not offer many observations or examples of the couple's interaction at the residence to demonstrate that they resided there together. We also indicated that although the Petitioner's friends stated they had met the couple at their joint residence for various events, their affidavits lacked specific details of the occasions mentioned. For these reasons we afforded the affidavits below limited probative value in establishing that the Petitioner satisfied the joint residency requirement. We determined that although the record showed that J-H- received mail at the claimed shared residence, it did not establish, by a preponderance of the evidence, that he resided there, even considering these affidavits.

On motion, the Petitioner argues that we erred in determining that the evidence in the record below was insufficient to establish her joint residence by a preponderance of the evidence. She repeats her appellate argument that the Wells Fargo correspondence shows that J-H- resided there with her because it discussed insurance held during the claimed period of joint residency. She also contends, as she did on appeal, that the traffic citation notice demonstrates that J-H- must have changed his address with the DMV and therefore that it was more likely than not that he not only received mail at the address, but also lived there. Regarding the affidavits in the record below, the Petitioner also repeats the claim she made on appeal that her relatives provided detailed observations of the couple and interactions with J-H- at their shared residence, and that her friends' affidavits attested to visiting the couple and confirmed details of their joint residence as well. Apart from restating her appellate arguments, the Petitioner does not identify other evidence in the record below or offer an explanation to show that our decision was incorrect based upon the record before us or was based upon an incorrect application of law or policy. The Petitioner's repetition of her appellate arguments is insufficient to overcome our determination on motion.

The Petitioner also asserts on motion that we committed a legal error in our decision. She notes that, in the context of the naturalization of spouses of U.S. citizens, applicants also are required to establish joint residency, but that the regulation at 8 C.F.R. § 319.1(b)(2)(ii)(C) provides an exemption to this requirement when the applicant lives apart from their U.S. citizen spouse due to essential business or occupational demands. The Petitioner claims that as her living arrangement with J-H- was involuntary due to the nature of her job as a live-in caretaker, this exemption to the joint residency "should" apply to the VAWA residency requirement in her case. In our decision, we determined that the Petitioner had established by a preponderance of the evidence that she resided at the [redacted] CA residence and not, as the Director concluded, at the location where she worked. The Petitioner maintains on motion, and in the record below, that she resided with J-H- at the [redacted] CA residence, and therefore satisfies the joint residency requirement. She does not offer evidence to substantiate her claim on motion that she would require an exemption from joint residency due to her occupation. Even had the Petitioner done so, as she acknowledges on motion, no such exemption to the joint residency requirement exists under section 204(a)(1)(A)(iii) of the Act, and we lack the authority to waive or disregard the requirements of the statute, as implemented by regulation. *See e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). Accordingly, the Petitioner has not demonstrated that we committed a legal error in our decision.

For the foregoing reasons, the Petitioner has not established that we erred in our application of law or policy or that our decision was incorrect based upon the record below. She therefore has not satisfied the requirements of a motion to reconsider at 8 C.F.R. 103.5(a)(3).

ORDER: The motion to reconsider is dismissed.