



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

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

In Re: 24048572

Date: JAN 30, 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 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 Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition). On appeal, we adopted and affirmed the Director's decision regarding residence eligibility under VAWA. The Petitioner has filed a motion to reconsider our decision. Upon review, we will dismiss the motion.

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 VAWA petitioner must establish that they resided with the U.S. citizen spouse. Section 204(a)(1)(A)(iii)(II)(dd) of the Act. 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). Although we must consider any credible evidence relevant to the VAWA 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). 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).

The Petitioner, a native and citizen of Nigeria, entered the United States as a non-immigrant student in December 2010. In [] 2014, Petitioner married J-P-¹, a U.S. citizen. She filed the current VAWA petition in July 2016. The VAWA petition was subsequently denied in April 2021. The Director's decision was appealed to us in May 2021 and we dismissed the appeal in May 2022.

¹ We use initials to protect the privacy of individuals.

The Director denied the VAWA petition on multiple grounds determining that the Petitioner had not met her burden of proof regarding the good faith marriage, joint residence, and abuse or extreme cruelty requirements under VAWA. The Director reached their decision in part because of an administrative investigation where USCIS officers obtained a lease agreement directly from the leasing office of the Petitioner's claimed joint residence with J-P-. The Director determined that the lease submitted by the Petitioner in support of the VAWA petition showing J-P-'s name as an occupant had been altered. The lease obtained directly from the leasing office did not name J-P- as an occupant of the apartment and was not signed by him.

On appeal, the Petitioner submitted evidence previously reviewed by the Director and a statement saying she contacted the leasing office and confirmed that the lease agreement she provided to USCIS containing J-P-'s signature was genuine. The evidence was insufficient to establish eligibility under the joint residence requirement for VAWA and we dismissed the appeal on that ground. We did not make a determination on the good faith marriage or abuse or extreme cruelty requirements because the joint residence requirement was dispositive of the Petitioner's appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976).

On motion, the Petitioner claims that the lease agreement provided with her petition is genuine and should be sufficient evidence that she and J-P- resided with one another by the any credible evidence standard. To support this assertion, she provides photocopies of evidence previously submitted with the initial petition. The Petitioner's assertion that the lease agreement is genuine does not provide a sufficient explanation for the existence of the two separate and different lease agreements or establish that she and J-P- resided with one another. Upon review, the Petitioner has not resolved the discrepancies between the lease agreement submitted with the VAWA petition and the lease agreement obtained by USCIS directly from the leasing office.

The Petitioner does not cite any pertinent precedent decisions to demonstrate that our decision was based on a misapplication of law or agency policy. In addition, the Petitioner has not established that our prior decision was incorrect based on the evidence in the record at the time of the initial decision. Therefore, the Petitioner has not met the requirements of a motion to reconsider, as specified in 8 C.F.R. § 103.5(a)(3). Accordingly, the motion to reconsider is dismissed. The VAWA petition will remain denied.

ORDER: The motion to reconsider is dismissed.