



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

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

MATTER OF S-M-H-

DATE: APR. 29, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360 PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that she resided with her U.S. citizen spouse and that he subjected her to battery and extreme cruelty during the marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The Petitioner filed a subsequent appeal. We withdrew the Director's battery and extreme cruelty determination and affirmed the denial on the joint residence ground. This matter is before us on motions to reopen and reconsider.

On motion, the Petitioner submits a brief, a supplemental personal statement, and previously submitted documents.

Upon review, we will deny the motions.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) 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 U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Cameroon, who last entered the United States, as a B-2 nonimmigrant

(b)(6)

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visitor. She married B-H-¹ a U.S. citizen and subsequently filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The Director denied the Form I-360 and we dismissed a subsequent appeal.

III. ANALYSIS

In our decision on appeal, we determined that the Petitioner's statement did not contain sufficient details about her joint residence with B-H-. We further determined that the statements from the Petitioner's friends and family likewise lacked substantive information regarding the Petitioner's joint residence. In addition, we found that the record contained unresolved inconsistencies in the evidence and the Petitioner did not provide sufficient details regarding her claimed residence with B-H-. Specifically, the Petitioner did not sufficiently explain the dates she resided with B-H-, the location of their joint residences, or details about their belongings and shared routines within the residence. Our prior decision is incorporated here.

On her Form I-360, the Petitioner indicated that she resided with B-H- from August 2006 through July 2007, and that they last resided together at [REDACTED] Texas. In her statements, submitted with her Form I-360, the Petitioner made no reference of her marital residence with B-H-. The Petitioner's statement submitted on appeal is similarly lacking in substantive details. As with her previous statements, the Petitioner did not address the alleged joint residence in any meaningful way, or their life together in their claimed joint residences.

On motion, the Petitioner contends that in making our determination, we applied an erroneous standard, that of "preponderance of the evidence," when the proper standard of review in these proceedings is the "totality of factors in the aggregate." Contrary to the Petitioner's assertion, the preponderance of the evidence standard of review is the evidentiary standard by which USCIS adjudicates petitions under section 204(a)(1)(A)(iii) of the Act. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). A self-petitioner must demonstrate his or her eligibility by a preponderance of the evidence that is applicable to all immigrant visa petitions. USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). In this case, as in all visa petition proceedings, the Petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the Petitioner's burden of proof. Furthermore, our decision on appeal discussed the Petitioner's joint residence and explained why the documentary evidence did not support her claim, including numerous inconsistencies and discrepancies. In this case, the submitted evidence does not meet the preponderance of the evidence standard.

The Petitioner further asserts that the record, including the evidence submitted on motion, is sufficient to establish joint residence. In her statement on motion, the Petitioner provides some

¹ Name withheld to protect the individual's identity.

additional information regarding their claimed residential apartment. The Petitioner states that she and B-H- resided in a residential complex made up of several numbered buildings. She describes her one bedroom apartment as being “not too big, but it was not small either.” The Petitioner also provides some additional information regarding the furnishings in her living room. As evidence of their marital routines, the Petitioner provides hers and B-H-’s work schedule and the household chores that she performs on the weekends. Although, the information that the Petitioner provides is helpful, it does not sufficiently describe their jointly-held possessions, shared residential routines, visits, neighbors, and social gatherings with friends at their residence or any other aspect of the allegedly joint residence in any meaningful way. Furthermore, although the record contains statements of support from individuals who claimed to have been aware of the Petitioner’s joint residence with B-H-, those statements lack detailed information about the claimed joint residence. The Petitioner’s statement on motion and the statements submitted on her behalf provide no further details regarding her joint residence with B-H-.

On motion, the Petitioner reiterates her claim made on appeal that a child conceived during the marriage is a strong indication of cohabitation. As noted in our prior decision, joint residence is not necessary for a couple to have a child together. The birth of the Petitioner’s son establishes that she and B-H- had an intimate relationship but is not sufficient, on its own, to establish that they resided together during the marriage. The record, including the Petitioner’s statement on motion, does not provide testimony or other consistent probative evidence, establishing when, where, and for how long the Petitioner allegedly resided with B-H- at specific addresses during the marriage. Our review of the record in the aggregate indicates that we properly determined that the Petitioner has not established, by a preponderance of the evidence, that she resided with B-H-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of S-M-H-*, ID# 16518 (AAO Apr. 29, 2016)