



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

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

MATTER OF R-C-H-

DATE: AUG. 15, 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and we dismissed the Petitioner's appeal. In our decision, incorporated here by reference, we concluded that the Petitioner had not established that she entered into marriage with her U.S. citizen spouse in good faith and that she had resided with him. The Petitioner filed a subsequent motion to reopen and reconsider which we denied as untimely.

The matter is now before us again on a motion to reopen and reconsider. On motion, the Petitioner submits a brief letter. The Petitioner claims that her prior motion was untimely due to the ineffective assistance of her former counsel. She further generally contends that she entered into marriage with her spouse in good faith and resided with him.

Upon review, we will deny the motion to reopen and reconsider.

#### 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).

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

## II. ANALYSIS

A full review of the record on motion does not establish the Petitioner's eligibility. The motion will be denied for the following reasons.

In our prior appellate decision, we addressed the individual evidentiary deficiencies in the record, including numerous inconsistencies in the Petitioner's testimony, statements, and documentary evidence before USCIS, and ultimately, we found that the Petitioner had not established her good-faith intentions in marrying her U.S. citizen spouse, J-H,<sup>1</sup> and that she had resided with him.

As indicated, she filed a motion to reopen and reconsider which we denied as untimely. On her second motion here, the Petitioner requests reopening and consideration of her prior late-filed motion on the basis that the untimely filing was solely due to the ineffective assistance of her former counsel who had not timely notified her about the June 1, 2015, denial of her appeal. She further contends that her former counsel also misinformed her by advising her that she had until July 1, 2015, to mail her motion. The Petitioner states that her motion was untimely because she followed the instructions of her counsel.

A claim based upon ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement entered into with counsel with respect to the actions to be taken and the representations made or not made by counsel in this regard; (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond; and (3) that the appeal or motion reflect whether a complaint has been filed with the appropriate disciplinary authorities where counsel's actions involved a violation of ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988), *aff'd*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988).<sup>2</sup>

The Petitioner has not properly articulated a claim for ineffective assistance of counsel under the requirements of *Matter of Lozada*. In support of her ineffective assistance claim, she asserts that her former counsel did not notify her of the denial of her appeal in a timely manner, and she submits various email communications,<sup>3</sup> and other evidence of her attorney-client relationship, with former counsel. However, the record does not reflect that she notified former counsel of the allegations she has made and that she has attempted to file a complaint with appropriate disciplinary authorities against her former counsel as required. Accordingly, the Petitioner did not articulate a proper claim for ineffective assistance of counsel under *Lozada*.

In addition, even if the Petitioner's prior motion had been considered timely, it would still have been denied. On motion, the Petitioner did not raise any specific legal or factual error in our prior

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<sup>1</sup> We provide the initials of individual names throughout this decision to protect identities.

<sup>2</sup> *Lozada* was overruled in *Matter of Compean*, 24 I&N Dec. 710, 726-27 (BIA 2009), but only to the extent that *Lozada* had held that there is a constitutional right to effective assistance of counsel in removal proceedings.

<sup>3</sup> The email correspondence shows that the Petitioner's former counsel did not notify her of the denial of her notice until June 26, 2015.

decision on appeal and instead, indicated that she had no further evidence to proffer to establish her eligibility. In a brief letter, she stated she loved her spouse and reiterated her prior assertion that the inconsistent statements she made to immigration officials during an onsite investigation conducted at her home were the result of panic and nervousness and the abuse to which her spouse had been subjecting her. However, she did not specifically address any of the remaining inconsistencies and evidentiary deficiencies, including regarding the claimed shared residences, which we discussed in detail in our previous decision dismissing the Petitioner's appeal. As the Petitioner did not identify any error in our prior appellate decision and only reasserts in a general manner the same arguments that she previously made on appeal, she has not overcome the deficiencies noted in our prior decision. Accordingly, we reaffirm our prior finding that the preponderance of the relevant evidence did not establish that the Petitioner entered into marriage with her spouse in good faith and had resided with him.

### III. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. 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 R-C-H-*, ID# 17636 (AAO Aug. 15, 2016)