



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

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

MATTER OF G-A-R-D-J-

DATE: JULY 6, 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, initially approved the petition, but later revoked that approval. The Director concluded that the Petitioner did not establish that he entered into his marriage in good faith. The Petitioner filed a timely appeal that we dismissed, finding that the Petitioner had not established that he entered into his marriage in good faith, or that he jointly resided with his wife.

The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that he has provided sufficient evidence to show that he married his wife in good faith and jointly resided with her.

We will grant the motion and sustain the appeal.

**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 United States 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 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

## II. ANALYSIS

Upon a full review of the record, as supplemented on motion, the Petitioner has overcome the grounds for denial. The motion to reopen will be granted. As the motion to reopen shall be granted, the motion to reconsider is moot.

The Petitioner, a citizen of the Dominican Republic, last entered the United States without inspection, admission, or parole. The Petitioner married L-R-<sup>1</sup> a U.S. citizen, and subsequently filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on his relationship with L-R-. In our prior decision, incorporated here by reference, we determined that the Petitioner had not established good-faith entry into his marriage or that he jointly resided with L-R- because the Petitioner and his friends' statements submitted below did not provide sufficient detail about his and L-R-'s courtship, engagement, wedding, joint residence and shared marital experiences. On motion, the Petitioner submits another personal statement which contains additional probative and detailed descriptions of their courtship, the wedding ceremony, joint residence, shared marital experiences, their daily routines, and his feelings for and plans he had for the future with L-R-. In addition, his statement also explained that although the Petitioner kept an apartment in New York throughout their marriage, it was because it was necessary for work and that although he was a weekday commuter, he returned to his home with L-R- every weekend.

On motion, the Petitioner also submits several statements from L-R-'s family members and mutual friends attesting to his good-faith entry into the marriage and his and L-R-'s joint residence. His friends and L-R-'s family specifically describe seeing the couple's interactions, events they shared together including the couple's wedding, and visits to the couple's joint residence. L-R-'s mother also described the Petitioner's relationship with his and L-R-'s daughter.

Further, the Petitioner submits another letter from his ex-wife explaining that she fraudulently indicated that she was still married to the Petitioner after their divorce in order to obtain a visa. He provides letters from his sons explaining that after the Petitioner and his ex-wife divorced, they did not maintain a relationship. They also noted that they were children when someone else filled out their visa applications indicating that their mother was still married to the Petitioner, but that they were aware that their parents were divorced at the time and that the Petitioner was married to L-R-. In his brief, the Petitioner asserts that he cannot explain why his ex-wife said they were still married and committed fraud because he was unaware of her actions at the time.

These statements, in conjunction with the evidence submitted below, provide a detailed and credible account of his marital intentions and joint residence. When viewed in the totality, the preponderance of the relevant evidence demonstrates that the Petitioner entered into marriage with L-R- in good faith, and jointly resided with her, as required by sections 204(a)(1)(A)(iii)(I)(aa) and (II)(dd) of the Act.

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<sup>1</sup> Name withheld to protect the individual's identity.

#### IV. 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 been met.

**ORDER:** The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of G-A-R-D-J-*, ID# 17073 (AAO July 6, 2016)