



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

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

MATTER OF H-T-M-V-

DATE: SEPT. 19, 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, approved the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director subsequently revoked approval of the VAWA petition, concluding that the Petitioner had not established that she entered into her marriage with her U.S. citizen spouse, T-L-,¹ in good faith. We dismissed the Petitioner's appeal. Our previous decision is incorporated here by reference.

The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner provides a brief.

Upon review, we will deny the motion.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be proved 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).

¹ Name withheld to protect the individual's identity.

II. ANALYSIS

In our prior decision, we determined that the Petitioner did not demonstrate by a preponderance of the evidence that she married T-L- in good faith. The Petitioner's initial statement was vague and lacked probative details of their courtship, wedding ceremony, joint residence, and any of their shared experiences apart from the abuse. With respect to her claim to have entered into marriage with T-L- in good faith, the Petitioner's evidence included a print-out of a history for her joint bank account with T-L-, unsigned Internal Revenue Service (IRS) Forms 1040, U.S. Individual Tax Returns, for 2007 and 2008, and a State of North Dakota tax refund check. We noted that the bank account history was dated after the couple's October 2008 separation. Moreover, the Petitioner did not include related bank account statements to demonstrate joint assets before or during the marriage to T-L- or otherwise discuss their joint use of this account. The federal tax returns for 2007 and 2008 showed the couple's filing status as married filing jointly, but the tax returns were unsigned and did not evidence filing with the IRS. We also discussed statements that the Petitioner made to USCIS officers on September 7, 2012, indicating that her marriage to T-L- was not *bona fide*.

On motion, the Petitioner submits a brief in which she asserts that USCIS officers pressured her into making statements disavowing the validity of her marriage to T-L-. Specifically, the Petitioner asserts that her statements were improperly obtained, repudiates those statements, and maintains that USCIS incorrectly gave more weight to the statements she gave to the USCIS officers than to her other sworn statements attesting to the validity of her marriage to T-L-. The Petitioner contends that because of her poor English-language skills and confusion, the USCIS officers who visited her home and obtained her statements engaged in behavior that "transgressed notions of fundamental fairness and undermined the probative value" of her statements. The cases that the Petitioner cites in support of this claim generally involve fourth amendment issues and alleged violations of due process. For example, in one cited case the Supreme Court concluded that "evidence derived from peaceful arrests by [Immigration and Naturalization Service] INS officers need not be suppressed in an [INS] civil deportation hearing." See *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1051 (1984). Another case, *Matter of Toro*, 17 &N Dec. 340, 343 (1980), is a deportation case where the Board of Immigration Appeals concluded that use of a respondent's voluntary statements was not fundamentally unfair even though the statements were made during an apparently unlawful initial stop. In the matter before us, the Petitioner made voluntary statements to USCIS officers during a home visit, but the officers did not place her under unlawful arrest or stop, or otherwise coerce her into making the statements. These cases are not analogous to the Petitioner's own situation and do not demonstrate that we must give discounted evidentiary value to her incriminating statements that she voluntarily made.

As we discussed in our prior decision, the agency investigative report shows that the Petitioner "had a lengthy and detailed conversation" with the USCIS officers indicating that she married T-L- primarily for the purpose of circumventing immigration laws. Although the Petitioner claims her statements were made under duress and the result of "confusion," she has not demonstrated that they were the result of unlawful questioning, coercion, or otherwise involuntary. As such, she has not demonstrated that the statements in which she asserted that her marriage to T-L- was not *bona fide* must be accorded lesser weight than the other statements she submitted in support of her VAWA petition.

With respect to our determination that the Petitioner's remaining evidence was otherwise insufficient to establish her good-faith entry into marriage with T-L-, the Petitioner addresses only our finding that she did not establish that she and T-L- jointly filed their unsigned 2007 and 2008 federal tax returns. Specifically, on motion, the Petitioner asserts that this is "belied by the fact that a copy of the tax refund check was submitted" with the VAWA petition. However, the 2008 tax refund check was from the state of North Dakota and is not evidence that the Petitioner and T-L- jointly filed the federal returns that she provided as evidence of her good-faith entry into marriage with T-L-. Without detailed testimony from the Petitioner, the remaining documentary evidence remains insufficient in demonstrating that the Petitioner married T-L- in good faith.

The Petitioner has not submitted new facts in support of her motion to reopen that overcome our prior determination. Further, although she has cited case law in support of her filing, she has not established that those cases are binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied law or agency policy or was incorrect based on the relevant evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). For these reasons, the Petitioner's motion must be denied.

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 H-T-M-V-*, ID# 113966 (AAO Sept. 19, 2016)