



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

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

MATTER OF R-A-F-

DATE: DEC. 21, 2015

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) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Acting Director, Vermont Service Center, denied the petition and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the evidence did not establish that the Petitioner resided jointly with her U.S. citizen spouse during their marriage and that the Petitioner entered into the marriage in good faith. The Petitioner filed motions to reopen and reconsider, which the Director granted. However, the Director affirmed the denial of the Form I-360. The Petitioner then filed a timely appeal. In our decision on appeal, we concluded that the preponderance of the relevant evidence did not demonstrate that the Petitioner resided jointly with her spouse and that she married her spouse in good faith. We also noted in our decision that, although the Petitioner indicated on her Form I-290B, Notice of Appeal or Motion, that she would submit a brief in support of her appeal within 30 days, the record of proceedings did not contain an appeal brief or additional evidence from the Petitioner.

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).

On motion, the Petitioner provides evidence that she submitted an appeal brief to the Director prior to our appellate decision. The Petitioner's appeal brief largely summarized her previously submitted evidence and argued that the evidence was sufficient to meet her burden of proof. The Petitioner's brief on motion also repeats nearly verbatim the arguments contained in her appeal brief, focuses mainly on the Director's decision, and does not specifically address most of the findings we made in our decision on appeal. In particular, she does not offer new facts with supporting documentary evidence to support a motion to reopen. Also, aside from noting that we did not consider the appeal

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brief she filed with the Director, the Petitioner does not clearly assert that we erred in our decision. She does not cite 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. Instead, she argues that the errors occurred in the Director's decision below.

Accordingly, the Petitioner's submission does not meet the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2). The Petitioner's submission also does not meet the requirements of a motion to reconsider. The Petitioner requests that we reopen and reconsider her case based on her prior documentation. However, she does not assert that the prior decision incorrectly applied the pertinent law or agency policy. Nor does she assert that the prior decision was erroneous based on the evidence of record at the time of the initial decision. Consequently, the motion to reopen and motion to reconsider must be denied. *See* 8 C.F.R. § 103.5(a)(4).

The Petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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-A-F-*, ID# 15103 (AAO Dec. 21, 2015)