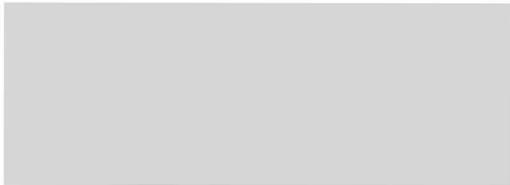




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUL 13 2015

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on motion. The motion will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her U.S. citizen spouse.

The director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, finding the evidence insufficient to establish that the petitioner's spouse had subjected her to battery or extreme cruelty during their marriage. In our decision on appeal, we found no error in the director's decision and dismissed the appeal. Our prior decision is incorporated here by reference.

On the instant Notice of Appeal or Motion (Form I-290B), the petitioner checked box 1.b. at Part 3, indicating: "I am filing an appeal to the AAO. My brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal." However, a petitioner cannot file an appeal of our previous decision. Although the petitioner later filed a brief indicating that she intended to file a motion to reconsider, any brief or evidence filed in support of a motion must be submitted at the time of filing the motion. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner may supplement a previously filed appeal. This regulation, however, applies only to appeals, not to motions to reopen or reconsider. There is no analogous regulation which allows a party to submit new evidence in furtherance of a previously filed motion.

Similarly, the instructions for Form I-290B provide that unlike appeals: "No additional time will be permitted to submit supplementary arguments or evidence in support of a motion to reopen or reconsider after the Form I-290B has been filed." Part 3 of the Form I-290B itself contains six boxes, one of which the petitioner must check to indicate whether the petitioner is filing an appeal or motion. Of the three boxes that pertain to motions, all indicate that the "brief and/or additional evidence is attached" to the motion. The Form I-290B contains no provision for the submission of briefs or evidence after the filing of the motion. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(1), every benefit request must be executed and filed in accordance with the form instructions, which are incorporated into the regulation.

Furthermore, even if the regulation and Form I-290B did permit supporting evidence to be submitted after the filing of a motion, the petitioner has not met the requirements of a motion to reconsider. In her brief filed in support of her motion, the petitioner asserts that we erred by holding to her an improper standard of proof. She cites our statement in our decision on appeal that, based on *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), where a material doubt indicates that a claim is probably not true, we can deny the benefit request. The petitioner asserts that *Chawathe* discusses the preponderance of the evidence standard and is therefore contrary to the requirement for petitions filed pursuant to section 204(a)(1)(A)(iii) of the Act that we consider any credible evidence, as stated in section 204(a)(1)(J) of the Act and 8 C.F.R. § 204.2(c)(2)(i). Regarding inconsistencies we discussed between the petitioner's two statements regarding the abuse she had allegedly suffered, the petitioner alleges that "the facts are

substantially similar with minor ‘inconsistencies’ . . . [which] do not cast doubt on” her claim.¹ She also claims that, in finding that her friends’ letters of support lacked sufficient detail regarding the abuse the petitioner suffered, we abused our discretion and held the petitioner to a heightened standard. She notes that abuse victims cannot always obtain affidavits from witnesses of the abuse, and contends that the letters sufficiently describe the effects of the abuse on the petitioner.

In our *de novo* review of the instant petition, we considered any credible evidence the petitioner submitted, as required by section 204(a)(1)(J) of the Act and 8 C.F.R. § 204.2(c)(2)(i). However, the “any credible evidence” standard relates to the types of documentation a petitioner may submit in support of her claim; it does not change the burden of proof. The burden remains on the petitioner to establish, by a preponderance of the evidence, that she is eligible for the benefit she seeks. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. at 375. The petitioner has not met that burden in the instant case. The evidence the petitioner submitted lacks sufficient detail to support her claims. Although the petitioner’s friends make general statements regarding abuse she allegedly suffered, those statements are vague, lacking descriptions of any specific incidents. The preponderance of the evidence does not establish that the petitioner was the victim of battery or a pattern of violence amounting to extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner has not met the requirements for a motion to reconsider. She has not cited binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied law or agency policy, nor has she shown that our decision was incorrect based on the relevant evidence in the record at the time of the decision. Therefore, we must deny the motion. See 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

In these proceedings, the petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. at 128; *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the petitioner has not met that burden. Accordingly, the motion will be denied.

ORDER: The motion is denied. The appeal remains dismissed and the petition remains denied.

¹ The petitioner has not addressed on motion the other inconsistencies we raised in our decision on appeal. These include [REDACTED] statement that the petitioner’s husband was abusing her in 1995, which conflicts with the fact that the petitioner did not get married until [REDACTED] 1996, and the petitioner’s inconsistent statements regarding whether and when she and her husband rented or bought their home.