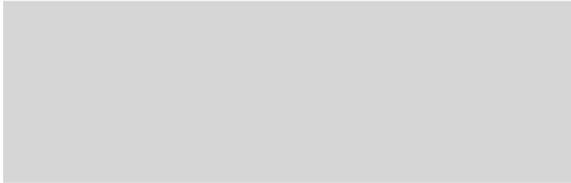




U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

JUN 01 2015

FILE #:

PETITION RECEIPT #:

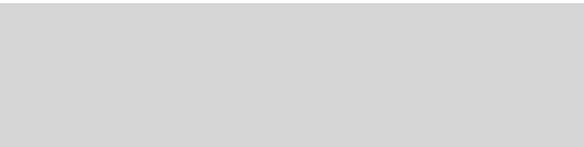
IN RE:

Self-Petitioner:

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)

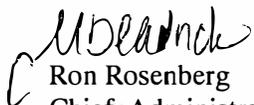
ON BEHALF OF PETITIONER:



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 resided with her spouse during their marriage and that he had subjected her to battery or extreme cruelty during their marriage. The petitioner filed a timely appeal. In our decision on appeal, we found that the petitioner had established that she was the victim of battery or extreme cruelty by her spouse, but had not demonstrated that she resided with him during their marriage. Therefore, we dismissed the appeal. Our prior decision is incorporated here by reference.

On motion, the petitioner submits a brief and additional evidence.

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).

In her brief filed on motion, the petitioner asserts that we erred in finding that she did not meet the residency requirement under section 204(a)(1)(A)(iii)(II)(dd) of the Act. Although she acknowledges that she did not reside with her spouse during marriage, she claims that she meets the residency requirement because she resided with R-H- for seven months prior to their marriage. She contends that section 204(a)(1)(A)(iii)(II)(dd) of the Act states that the alien must have “resided with the alien’s spouse or intended spouse,” and that section 204(a)(1)(A)(iii)(I)(bb) of the Act also provides for immigrant classification to an alien who was battered “during the marriage or relationship intended by the alien to be legally a marriage . . . by the alien’s spouse or intended spouse.” According to the petitioner, the use of the term “intended spouse” in the relevant sections of the Act “allows reasonable interpretation that the residence before the marriage should be accounted for classification under 204(a)(1) of the Act.”

The petitioner misinterprets the term “intended spouse” as it is used in section 204(a)(1) of the Act. The term does not refer to a future spouse, otherwise known as fiancé or fiancée, whom a petitioner intends to marry but has not yet married. Instead, pursuant to the definition at section 101(a)(50) of the Act, in pertinent part, “the term ‘intended spouse’ means any alien who meets the criteria set forth in section[s] 204(a)(1)(A)(iii)(II)(aa)(BB) [and] 204(a)(1)(B)(ii)(II)(aa)(BB)” These sections refer to an alien “who *believed that he or she had married* a citizen [or lawful permanent resident] of the United States and *with whom a marriage ceremony was actually performed* . . . but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States [or lawful permanent resident]” Sections 204(a)(1)(A)(iii)(II)(aa)(BB) and 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act (emphasis added). The petitioner does not claim, and the

evidence of record does not show, that she believed she had married R-H- or had participated in a marriage ceremony with him during the time they resided together.

Section 204(a)(1)(A)(iii)(II)(dd) of the Act requires that the petitioner demonstrate that she resided with her abusive spouse. The Act defines “residence” as a person’s place of general abode, meaning the person’s “principal, actual dwelling place in fact, without regard to intent.” Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Although the evidence does indicate that she resided with R-H- prior to their marriage, this does not meet the requirement at section 204(a)(1)(A)(iii)(II)(dd) of the Act, as she did not reside with him when he was her spouse.

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. Accordingly, we must deny the motion to reconsider. *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 her eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). 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.