



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

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

MATTER OF A-L-A-

DATE: APR. 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) § 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, denied the petition. The Director concluded that the Petitioner had not established that she entered into the marriage with her U.S. citizen spouse in good faith by clear and convincing evidence and therefore the approval of her petition was barred by section 204(g) of Act because she had not met the requirement for the *bona fide* marriage exemption under section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3). We dismissed a subsequent appeal.

The matter is before us again on a motion to reconsider.¹ On motion, the Petitioner submits a brief, in which she claims that the record of proceedings contains sufficient evidence to establish her eligibility for the benefit sought.

Upon review, we will deny the motion.

I. APPLICABLE LAW

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 On the Form I-290B, Notice of Appeal or Motion, the Petitioner indicated that she also filed an appeal of our prior decision. We exercise appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003) and subsequent amendments. We do not exercise jurisdiction over our own appeals. This matter will be treated solely as a motion to reconsider.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of El Salvador, entered the United States on or about [REDACTED] 2004, without admission, inspection, or parole. U.S. Border Patrol agents apprehended the Petitioner and placed her in removal proceedings under section 240 of the Act, 8 U.S.C. §1229a. An immigration judge issued an order for the removal of the Petitioner *in absentia* on [REDACTED] 2005. The record of proceedings reflects that the Petitioner remained in the United States since her entry. The Petitioner married R-R-², a U.S. citizen, on [REDACTED] 2011, and they were divorced on [REDACTED] 2015. She filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on August 8, 2014, which the Director subsequently denied. We dismissed the Petitioner's appeal and incorporate our decision herein by reference.

III. ANALYSIS

The Petitioner's brief on motion primarily repeats the arguments contained in her appeal brief and does not specifically address the majority of the findings we made in our decision on appeal. The Petitioner again claims that the evidence in the record of proceedings establishing that the Petitioner was battered or subjected to extreme cruelty by R-R- also establishes that she married R-R- in good faith by clear and convincing evidence. She does not, however, 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 of proceedings at the time of the decision.

As we noted in our prior decision, the Petitioner must independently establish each of the eligibility requirements under the Act. The Petitioner bears the burden of proof to establish that she was subjected to battery or extreme cruelty by a preponderance of the evidence. However, because the Petitioner married R-R- while she was in removal proceedings, the approval of her Form I-360 is barred by section 204(g) of the Act unless she can demonstrate that she entered into her marriage with R-R- in good faith by clear and convincing evidence. *See* 8 C.F.R. § 204.2(c)(1)(vi); *see also* section 245(e)(3) of the Act and 8 C.F.R. § 245.1(c)(8)(v). The Petitioner claims in her brief on motion that it is "incongruous" for us and the Director to hold that the Petitioner was subjected to battery or extreme cruelty and not to also find that she entered into her marriage in good faith. The Petitioner's counsel asserts that R-R- would not have reacted "with such rage and abuse" when the Petitioner requested a divorce if their marriage was not *bona fide*.

R-R-'s reaction to the Petitioner's request for a divorce is not relevant to the inquiry before us regarding the Petitioner's intentions when marrying. The relevant inquiry is whether the Petitioner entered into her marriage with R-R- in good faith and we do not examine R-R-'s subjective intent with respect to the marriage. As we stated in our appeal decision, the affidavits submitted by the Petitioner and her friends along with the documentary evidence did not contain the detail necessary for us to conclude that the Petitioner entered into her marriage in good faith by clear and convincing evidence.

² Name withheld to protect the individual's identity.

(b)(6)

Matter of A-L-A-

In her brief on motion, the Petitioner also asserts that we erred with respect to our assessment of two pieces of evidence submitted by the Petitioner with the Form I-360 and in response to a request for evidence (RFE) issued by the Director. First, the Petitioner claims that we erred in excluding an affidavit by [REDACTED]. As we noted in our prior decision, the affidavit by [REDACTED] was not accompanied by a certified translation, as required by 8 C.F.R. § 103.2(b)(3). The Petitioner claims that a certified translation is not required because the affidavit was in English. However, the Petitioner refers to only one affidavit by [REDACTED] which was written in English. In our prior decision, we noted that the other affidavit submitted by [REDACTED] was not accompanied by a certified translation and, in her brief on motion, the Petitioner does not address this deficiency.

Second, the Petitioner argues that we unfairly discounted photographs submitted by the Petitioner because they do not contain a description of the events depicted. In our prior decision, we noted that the photographs do not describe the events depicted and are not dated. The photographs submitted by the Petitioner do not carry significant weight regarding her claim that she entered into the marriage with her spouse in good faith because, while they show the Petitioner and her spouse together on several occasions, without descriptions or dates they are insufficient to establish a probative account of their courtship, wedding ceremony, shared residence, and shared experiences. *See* 8 C.F.R. § 245.1(c)(8)(v).

The Petitioner has not demonstrated by clear and convincing evidence that she married her spouse in good faith. Accordingly, she has not established her eligibility for the *bona fide* marriage exemption at section 245(e)(3) of the Act, and section 204(g) of the Act consequently bars approval of the Form I-360. Because the Petitioner is not exempt from section 204(g) of the Act, she also has not demonstrated her eligibility for immediate relative classification. *See* section 204(a)(1)(A)(iii)(II)(cc) of the Act; 8 C.F.R. § 204.2(c)(1)(iv).

IV. CONCLUSION

In these 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. at 128 (BIA 2013). Here, that burden has not been met. The Petitioner remains ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act because she has not overcome the basis for the denial of the Form I-360.

ORDER: The motion to reconsider is denied.

Cite as *Matter of A-L-A-*, ID# 16565 (AAO Apr. 6, 2016)