



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

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

MATTER OF J-R-

DATE: JAN. 4, 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)(ii), 8 U.S.C. § 1154(a)(1)(A)(ii). The Acting Director, Vermont Service Center, denied the petition. We dismissed a subsequent appeal and motion to reconsider. The matter is now before us on a second motion to reconsider. The motion will be denied.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act.

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

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(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

....

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

....

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

....

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Germany who was last admitted to the United States on November 22, 2009, through the visa waiver program. The Petitioner married R-H,¹ a U.S. citizen, on [REDACTED] 2010, in [REDACTED] California, and they divorced on [REDACTED] 2010. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on January 27, 2012. The Director denied the Form I-360, finding that the record did not establish the Petitioner's joint residence with R-H- and the requisite battery or extreme cruelty. On appeal, we withdrew the Director's finding that the Petitioner was not subjected to battery or extreme cruelty, and dismissed the appeal, as the record did not establish the Petitioner's joint residence with R-H- during their marriage. We denied a subsequent motion to reconsider for the same reason. The Petitioner filed a timely motion to reconsider.

On motion, the Petitioner submits a brief and supplemental 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

¹ Name withheld to protect the privacy of the individual.

evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The Petitioner does not cite to binding case law or precedent decisions to establish that our prior decision was based on an incorrect application of law or USCIS policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). The Petitioner's statement also does not establish that our prior decision was incorrect based on the evidence of record at the time. Consequently, the motion to reconsider will be denied. See 8 C.F.R. § 103.5(a)(4).

III. ANALYSIS

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on motion, does not establish the Petitioner's eligibility. The motion to reconsider will be denied for the following reasons.

A. Joint Residence

The Petitioner admits that she and R-H- did not reside together during their marriage, but she claims to meet the residency requirement because she resided with him for seven months prior to their marriage, at which time she contends that she was his "intended spouse" within the meaning of 204(a)(1)(A)(iii)(II)(dd) of the Act. As we stated in our previous decision on motion, incorporated here by reference, the term "intended spouse," as it is used in section 204(a)(1) of the Act, does not refer to a future spouse, otherwise known as a fiancé or fiancée, whom a petitioner intends to marry but has not yet married. Under section 101(a)(50) of the Act, "the term 'intended spouse' means any alien who meets the criteria set forth in section 204(a)(1)(A)(iii)(II)(aa)(BB)"

On motion, the Petitioner claims that she qualifies as an intended spouse under section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, which includes an alien "who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage." The full citation for section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, however, reads as follows:

(II) For purposes of subclause (I), an alien described in this subclause is an alien –

(aa) (AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, *but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States*

(Emphasis added). The Petitioner does not allege, and the evidence does not show, that the Petitioner became the illegitimate spouse of R-H- when they married as a result of bigamy on the part of R-H-.

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Rather, the Petitioner maintains that she was R-H-'s "intended spouse" when she resided with him because they later married.

On motion, the Petitioner also submits further evidence that she married R-H- in good faith. We do not question her good-faith marital intentions.

Although the Petitioner may have intended to reside with R-H- after their marriage, the record reflects, and the Petitioner admits, that they did not reside together after they married. Furthermore, the Petitioner does not qualify as an "intended spouse," as defined in section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, as she did not believe that she had married R-H- prior to their joint residence, or that such marriage was not legitimate solely because of the bigamy of her ex-husband. Accordingly, the record does not establish that the Petitioner resided with R-H- when he was her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

IV. CONCLUSION

On motion, the Petitioner has not demonstrated that she resided with her U.S. citizen spouse during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden to establish her eligibility. 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 reconsider is denied.

Cite as *Matter of J-R-*, ID# 15151 (AAO Jan. 4, 2016)