



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

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

MATTER OF L-A-A-

DATE: JAN. 11, 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). The Director, Vermont Service Center, denied the petition. We dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider.¹ The motion will be denied.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, because the record did not establish that the Petitioner had a qualifying relationship with a U.S. citizen spouse and was eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.² In our June 2, 2015, decision, incorporated here by reference, we affirmed the Director's decision, as the Form I-360 was filed more than five years after the Petitioner and her U.S. citizen spouse were divorced. The Petitioner consequently did not possess a qualifying relationship with a U.S. citizen under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and was ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

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).

Here, the Petitioner resubmitted her previously-filed statement in support of the motion to reopen and to reconsider. She has not asserted any new facts to be proved in the reopened proceeding and has not

¹ Although the Petitioner checked the box on the Form I-290B, Notice of Appeal or Motion, indicating that she intended to file an appeal of our last decision, we do not exercise appellate jurisdiction over our own decisions. We will thus consider the filing as a motion to reopen and reconsider.

² As we noted in our previous decision, the Director also determined, without discussion, that the Petitioner did not establish that she entered into marriage with her former husband in good faith. The Petitioner does not address this issue on motion.

submitted any additional evidence in support of the merits of the Form I-360. Accordingly, her 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 submits the same statement requesting that we approve the Form I-360 based on equitable tolling.³ However, she does not discuss the basis of our denial or 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 reconsider must be denied. *See* 8 C.F.R. § 103.5(a)(4).

In visa petition 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. 127, 128 (BIA 2013). 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 L-A-A-*, ID# 15228 (AAO Jan. 11, 2016)

³ In our previous decision, we acknowledged that the Petitioner may not have been advised by her previous counsel that she could file a Form I-360 before the statute of limitations expired. Notwithstanding the Petitioner's reliance on her previous attorney, the two-year, post-termination filing period of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is a statute of repose not subject to equitable tolling, and we have no authority to waive this statutory deadline.