



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

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

MATTER OF X-Y-S-

DATE: MAY 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) section 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The Director concluded that the Petitioner had not established that she shared a marital residence with her U.S. citizen spouse, H-S-¹ and that she entered into marriage with H-S- in good faith. We subsequently dismissed the Petitioner's appeal based on the same conclusions.

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a statement in which she claims that we did not address evidence that she was abused by her spouse and requests that we remand the case to a local office so that the Petitioner can be interviewed.

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 policy (USCIS); 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).

II. ANALYSIS

The Director concluded that the Petitioner submitted evidence establishing that her spouse battered her or subjected her to extreme cruelty and therefore did not deny the Form I-360 on this basis.

¹ Name withheld to protect the individual's identity.

We did not address the evidence relating to battery or extreme cruelty in our prior decision because this was not an issue on appeal. Moreover, a petitioner who establishes that he or she has been battered or subjected to extreme cruelty does not consequently establish that he or she has resided with the spousal abuser and entered into marriage with the abuser good faith. Each criterion is distinct and a petitioner must separately establish that he or she has satisfied all of the statutory and regulatory criteria in order for USCIS to approve the Form I-360. Although USCIS must consider all credible, relevant evidence of a petitioner's joint residence and good faith marriage, the determination of what evidence is credible and the weight accorded that evidence lies within the agency's sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i), (iii), (vii). In our prior decision, we concluded that the affidavits from the Petitioner, her friends, and in-laws lacked consistent and probative details of the Petitioner's good-faith entry into marriage and shared residence with H-S-. On motion, the Petitioner has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and that our prior decision was incorrect based on the evidence of record at the time of the initial decision. *See* 8 C.F.R. § 103.5(a)(3). The Petitioner also requests that we remand the matter to a field office for an interview but provides no authority to support the request. The regulation at 8 C.F.R. § 204.2(c)(2) describes the evidentiary requirements for establishing eligibility, but does not require or include an in-person interview or the need for oral testimony.

The Petitioner's motion does not meet the requirements of a motion to reconsider and must therefore be denied. 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

III. CONCLUSION

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 reconsider is denied.

Cite as *Matter of X-Y-S-*, ID# 16460 (AAO May 4, 2016)