



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

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

In Re: 16773542

Date: FEB. 17, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner sought immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish his eligibility for immigrant classification because he had previously engaged in marriage fraud. The Director also denied a subsequent motion to reopen and reconsider. We dismissed the Petitioner's appeal and then a motion to reopen and reconsider.

The matter is now before us again on a motion to reconsider. The Petitioner submits a brief and a copy of *Zerezghi v. U.S. Citizenship & Immigr. Servs.*, 955 F.3d 802, 804 (9th Cir. 2020), and argues he did not have an opportunity to rebut the derogatory evidence of marriage fraud.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to show that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence in the record at the time of the initial decision. *Id.*

The Petitioner's submission does not meet these requirements. Although he submits a copy of a Ninth Circuit Court of Appeals decision, the Petitioner does not reside within the jurisdiction of the Ninth Circuit and, furthermore, the holding in that case is inapplicable here. In *Zerezghi*, the Court held that the Board of Immigration Appeals violated due process in adjudicating a Form I-130, Petition for Alien Relative, by relying on evidence (an apartment rental application) that had not been disclosed to the U.S. citizen petitioner in making a determination of marriage fraud. *Zerezghi*, 955 F.3d at 808-09. The Court specified that the "citizen petitioner has a constitutionally protected interest in the grant of an I-130 petition . . . because approval of an I-130 petition is nondiscretionary." *Zerezghi*, 955 F.3d at 808 (citations omitted). In contrast, there are no due process rights implicated in the adjudication of an immigrant application such as a VAWA petition. *See, e.g., Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *Azizi v. Thornburgh*, 908 F.2d 1130, 1134 (2d Cir. 1990) (explaining that although the Fifth Amendment protects against the deprivation of property rights when Congress has granted those

rights to foreign nationals, there is no “inherent property right in an immigrant visa”). Moreover, in any event, in this case, the Director issued a Notice of Intent to Deny (NOID) the VAWA petition, detailing the specific derogatory evidence used in making the determination that the Petitioner previously engaged in marriage fraud and provided the Petitioner with the opportunity to present evidence to rebut this finding.¹ The Petitioner submitted evidence in respond to the NOID and subsequently provided additional evidence on motion to the Director, and then again on motion to the Administrative Appeals Office.

The Petitioner does not cite any pertinent precedent decisions to demonstrate that we misapplied the law or USCIS policy. In addition, the Petitioner has not established that our prior decision was incorrect based on the evidence in the record at the time of the initial decision. Therefore, the submission does not meet the requirements of a motion to reconsider, as specified in 8 C.F.R. § 103.5(a)(3). Accordingly, the petition remains denied.

ORDER: The motion to reconsider is denied.

¹ We incorporate the Director’s decisions and our previous decisions here, which thoroughly summarized and analyzed the derogatory evidence from E-A-, who was convicted of conspiracy to commit immigration fraud and money laundering as well as the evidence submitted by the Petitioner.