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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

FILE: [Redacted]  
EAC 97 219 53250

Office: Vermont Service Center

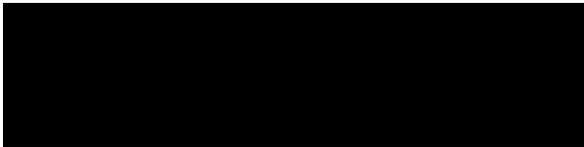
Date: DEC 08 2001

IN RE: Petitioner:  
Beneficiary:



APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER:



**PUBLIC COPY**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Bulgaria who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, the petitioner's prior counsel asserts that the Service "failed to consider the centuries old history of hatred between the Muslims and Christians on the Balkans and particularly in Bulgaria. Muslims in Bulgaria are still discriminated against. Although now democratic the government in Bulgaria still cannot eliminate the centuries old animosity between Christians and Muslims." Subsequent to the appeal, the petitioner's new representative states that the President signed the Trafficking Victims Protection Act of 2000 in which one of the many benefits of VAWA is that a self-petitioning spouse no longer must show extreme hardship when filing the I-360 petition.

8 C.F.R. 204.2(c)(1), in effect at the time the self-petition was filed, states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during

the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States as a visitor on June 17, 1996. The petitioner married her lawful permanent resident spouse on November 16, 1996 at Las Vegas, Nevada. On March 28, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her permanent resident spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child.

The director reviewed the evidence furnished by the petitioner and determined that the letter from Damian Marinov stating that the petitioner would be quietly punished by the civilian population as there is an increasing animosity towards the Muslims, was not supported by the article furnished. Nor is there mention of hostilities towards Muslims in present-day Bulgaria.

On appeal, prior counsel states that Muslims in Bulgaria are still being discriminated against and still cannot eliminate the centuries old animosity between Christians and Muslims. Counsel submits the 1999 Country Reports on Human Rights Practices in Bulgaria; articles regarding the relationship of Turks and Bulgarians; and affidavits from individuals affirming that the petitioner's removal would result in extreme hardship.

At the time of the director's decision, 8 C.F.R. 204.2(c)(1)(i)(G) required the petitioner to establish that her removal would result in extreme hardship to herself or to her child. On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(c) amends section 204(a)(1)(B)(ii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a resident alien is

no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. Id. Section 1503(c), 114 Stat. at 1520-21. Pub. L. 106-386 does not specify an effective date for the amendments made by section 1503. This lack of an effective date strongly suggests that the amendments entered into force on the date of enactment. Johnson v. United States, 529 U.S. 694, 702 (2000); Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991).

As a general rule, an administrative agency must decide a case according to the law as it exists on the date of the decision. Bradley v. Richmond School Board, 416 U.S. 696, 710-11 (1974); United States v. The Schooner Peggy, 1 Cranch 103, 110 (1801); Matter of Soriano, 21 I & N Dec. 516 (BIA 1996, AG 1997); Matter of Alarcon, 20 I & N Dec. 557 (BIA 1992). For immigrant visa petitions, however, the Board has held that, to establish a priority date, the beneficiary must have been fully qualified for the visa classification on the date of filing. Matter of Atembe, 19 I & N Dec. 427 (BIA 1986); Matter of Drigo, 18 I & N Dec. 223 (BIA 1982); Matter of Bardouille, 18 I & N Dec. 114 (BIA 1981). Even if the law changes in a way that may benefit the beneficiary, the appeal must be denied, without prejudice to the filing of a new petition, to ensure that the beneficiary does not gain an advantage over the beneficiaries of other petitions. Id. These decisions bind the Service. 8 C.F.R. § 3.1(g).

The petitioner has not established that if she were to return to Bulgaria she is likely to be the specific target of crime because of her religion. Nor has she established that she would be rejected, ostracized, or discriminated against as claimed, and whether living in a country where violence exists will subject her to such violence.

As required by Atembe, Drigo, and Bardouille, therefore, the appeal will be dismissed. This dismissal is without prejudice, however, to the filing of a new visa petition under section 204 of the Act, as amended by section 1503(c) of Pub. L. No. 106-386.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.