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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



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invasion of personal privacy

FILE: [REDACTED]
EAC 99 175 54195

Office: Vermont Service Center

Date: DEC 19 2001

IN RE: Petitioner:
Beneficiary:



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

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

Helen E. Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, and the previous decision of the Associate Commissioner will be affirmed.

The petitioner is a native and citizen of Japan 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 United States citizen.

The director denied the petition after determining that the petitioner had failed to establish that she: (1) 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; (2) is a person of good moral character; and (3) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child.

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion and dismissed the appeal on November 29, 2000.

On motion, counsel states that the law has been amended; therefore, the petitioner does not need to prove that she would suffer extreme hardship if she were to be deported to Japan. She further states that the petitioner has suffered extreme cruelty by a spouse who is a United States citizen, and that the petitioner meets the "good moral character" requirement based on a criminal record check.

PART I

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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.

The Associate Commissioner reviewed all the evidence furnished, including evidence furnished on appeal, and determined that the documentation provided failed to establish that the claimed abuse perpetrated toward the petitioner by her spouse was "extreme" as contemplated by Congress.

Counsel, on motion, submits a brief. Her argument on motion, however, is a paraphrase of her brief and other statements

furnished on appeal. These documents were reviewed and addressed by the Associate Commissioner in his decision. As provided in 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. Counsel has presented no new facts or other documentary evidence in support of the motion to reopen based on the petitioner's claim that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during the marriage.

The petitioner has failed to overcome this basis for denial on motion pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

PART II

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character.

The Associate Commissioner reviewed the evidence furnished and concluded that the petitioner had failed to overcome the director's finding, on appeal, that she had not established that she is a person of good moral character.

On motion, counsel submits a criminal record check by the State of California, Department of Justice, indicating that a search of the petitioner's fingerprints reveals no criminal history record in their files. The petitioner has, therefore, overcome this basis for denial on motion pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

PART III

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(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a citizen or 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(b), 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.

Atembe, Drigo, and Bardouille each involved petitions under the family-based preference categories in section 203(a) of the Act. In this case, however, the beneficiary seeks classification as the spouse of a citizen. INA section 204(a)(1)(A)(iii), 8 U.S.C. section 1154(a)(1)(A)(iii), as amended by Pub. L. No. 106-386, section 1503, supra. As immediate relatives, the spouses and children of citizens are not subject to the numerical limits on immigration, and do not need priority dates. INA section 201(b)(2)(A)(i), 8 U.S.C. section 1151(b)(2)(A)(i). The purpose of the Atembe, Drigo and Bardouille decisions would not be served by affirming the director's decision on this particular basis of the director's denial. For this reason, the director's and the Associate Commissioner's objections have been overcome on this one issue (8 C.F.R. 204.2(c)(1)(i)(G)).

Accordingly, the decision of the Associate Commissioner dated November 29, 2000, will be affirmed.

ORDER: The decision of the Associate Commissioner dated November 29, 2000, is affirmed.