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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



FILE: [REDACTED]  
EAC 00 256 50896

Office: Vermont Service Center

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

DEC 19 2001

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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: [REDACTED]

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*  
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 case will be remanded to the director for further action.

The petitioner is a native and citizen of the Dominican Republic 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 determined that the petitioner failed to establish that he is the spouse of a citizen or lawful permanent resident of the United States pursuant to 8 C.F.R. 204.2(c)(1)(i)(A) because his spouse was deceased prior to the filing of the self-petition on August 16, 2000. The director, therefore, denied the petition.

On appeal, the petitioner asserts that he was legally married to his citizen spouse when the petition was filed. He states that her death on June 5, 2000, did not preclude her from abusing him prior to her death. The petitioner states that his petition was not filed prior to his wife's death because of circumstances beyond his control, such as her illness, and that her state of health was of major importance to him. Additionally, his wife's family was not inclined, while she was ill, to prepare any testimony of her actions which had preceded her death and the filing of the self-petition.

The record reflects that the petitioner arrived in the United States on August 6, 1998 with a P-1 nonimmigrant visa (internationally recognized entertainment groups). The petitioner married his United States citizen spouse on July 16, 1999 at Bronx, New York. Although the record of proceeding is devoid of a death certificate, the petitioner states that his citizen spouse passed away on June 5, 2000. On August 16, 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, his United States citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

The director determined that the petitioner is ineligible for the benefit sought because his spouse was deceased on June 5, 2000; therefore, no petitionable relationship existed between the petitioner and his spouse at the time of filing of the petition on August 16, 2000.

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 claiming to qualify for immigration as the battered spouse of a United States citizen may file a self-petition if the alien demonstrates that he or she was a bona fide spouse of a United States citizen within the past 2 years and whose spouse died within the past 2 years. *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).

The record reflects that the petitioner's U.S. citizen spouse passed away on June 5, 2000, less than two years prior to the filing of the self-petition on August 16, 2000.

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 U.S. 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 objections have been overcome on this issue pursuant to 8 C.F.R. 204.2(c)(1)(i)(A).

The record of proceeding, however, does not contain the death certificate of the petitioner's spouse. The case will, therefore, be remanded so that the director may request that the petitioner submit the death certificate, and review the record of proceeding to determine whether all other criteria listed in 8 C.F.R. 204.2(c)(1) are satisfied. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review, and without fee.

**ORDER:** The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.