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U.S. Department of Justice  
Immigration and Naturalization Service

**PUBLIC COPY**

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



FILE: [Redacted]

Office: PHILADELPHIA DISTRICT OFFICER

Date: FEB 26 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:



Identification data deleted to prevent clearly unwarranted invasion of personal privacy

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, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the district director, Philadelphia, on August 14, 1997. A subsequent appeal was dismissed by the Associate Commissioner for Examinations on May 28, 1999. The matter will be reopened on Service motion pursuant to 8 C.F.R. 103.5(a)(5)(i). The previous decision of the Associate Commissioner will be withdrawn. The petition will be approved.

The petitioner is a native of the USSR and a citizen of Kazakhstan who is seeking classification as the battered spouse of a United States citizen 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).

On May 28, 1999, the Associate Commissioner affirmed the director's finding that the petitioner and her two daughters would not suffer extreme hardship upon return to Kazakhstan. Counsel submitted a motion to reopen and reconsider the Associate Commissioner's decision; however, the motion was not filed timely, as it was received by the Service 48 days later on July 15, 1999. Counsel did not provide an explanation for the delay in filing the motion.

The Service now seeks to reopen the proceedings to consider the evidence counsel previously submitted on motion in July 1999, and to consider additional evidence counsel submits at this time, which relates to the arrest of the petitioner's former husband for attacking workers and several children in an elementary school in York, Pennsylvania.

The issue to be examined in this proceeding is whether the return of the petitioner and her two daughters to Kazakhstan would result in extreme hardship. It is noted that the Service did not dispute the petitioner's claim that she suffered from battery and extreme cruelty by her U.S. citizen spouse, who is the same individual who was recently arrested for the attack at the elementary school. The district director's August 14, 1997 denial of the petition was based solely on a lack of persuasive evidence to show that a return to Kazakhstan would result in extreme hardship to the petitioner or to the petitioner's two daughters.

8 C.F.R. 204.2(c)(1)(viii) states:

The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the

self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation would cause extreme hardship.

8 C.F.R. 204.2(c)(2)(vi) states that evidence of extreme hardship may include affidavits, birth certificates of children, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence.

Counsel submitted evidence in July 1999 that was not previously available for review by the director or the Associate Commissioner. This evidence included, but was not limited to, information about general country conditions in Kazakhstan and information about access to mental health services in Kazakhstan. This additional evidence persuades the Service that deportation of the petitioner and her two daughters would result in extreme hardship. As this was the only basis for denying the petition, the petitioner has successfully overcome the district director's and the Associate Commissioner's objections.

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 met that burden. Accordingly, the previous decisions of the district director and the Associate Commissioner will be withdrawn and the petition will be approved, effective July 15, 1999, which is the date the Service received the petitioner's motion to reopen or reconsider.

**ORDER:** The previous decision of the Associate Commissioner will be withdrawn and the petition will be approved as of July 15, 1999.