

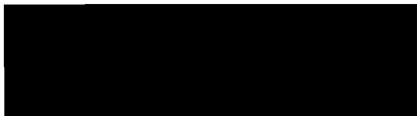


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U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: [Redacted]  
EAC 99 108 50923

Office: Vermont Service Center

Date: JUL 11 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

Identifying 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 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 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 she: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A) based on that relationship; (3) is a person of good moral character; and (4) 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, counsel asserts that the Service erred in denying the Form I-360 petition because the petitioner submitted proof in the initial filing of the petition that she is the wife of a citizen of the United States. He further asserts that the Service did not give sufficient weight in the affidavits that were submitted in assessing the petitioner's good moral character. He claims that if the Service established that the affidavits were sufficient in proving the petitioner's abuse, then it should have been given equal weight in the good moral character assessment. Counsel further asserts that to force the petitioner and her children to return to a country they have not lived in for ten years will cause hardship. He submits additional evidence.

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 petition, Form I-360, shows that the petitioner entered the United States without inspection on September 23, 1989, and that she married her United States citizen spouse on September 25, 1992 at Bronx, New York. On January 6, 1998, 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 U.S. citizen spouse during their marriage.

#### PART I

8 C.F.R. 204.2(c) (1) (i) (A) provides that the abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Additionally, 8 C.F.R. 204.2(c) (1) (i) (B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b) (2) (A) (i) or 203(a) (2) (A) of the Act based on that relationship.

The director determined that the petitioner failed to submit evidence as had been requested on March 16, 1999, to establish that [REDACTED] is a citizen or lawful permanent resident of the United States, that she is married to [REDACTED] and that she is eligible for immigrant classification based on that relationship.

On appeal, counsel submits a copy of [REDACTED] birth certificate reflecting that he was born in Puerto Rico on January 31, 1961. He also submits a copy of what appears to be a State of New York marriage certificate. This certificate, however, is illegible and the authenticity of this certificate cannot be determined. Nor is it clear from the certificate whether the petitioner and [REDACTED] have previous marriages. It is noted on the birth certificates of the petitioner's three children, born in New York on June 18, 1990; October 3, 1991; and April 23, 1993, that their father is [REDACTED].

The petitioner has failed to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(A) and (B).

## 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. Pursuant to 8 C.F.R. 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

Because the only documents initially submitted by the petitioner to establish good moral character consisted of affidavits which briefly mentioned that she is a good person, the petitioner was requested on March 16, 1999 to submit evidence of her good moral character. Counsel's assertion on appeal that if the Service established that the affidavits were sufficient to prove the petitioner's abuse, then it should have been given equal weight in the good moral character assessment, is without merit. Regulations at 8 C.F.R. 204.2(c)(2)(v) provide the requirements to be met by the petitioner in establishing good moral character. Furthermore, examples of evidence the petitioner may submit to establish good moral character pursuant to 8 C.F.R. 204.2(c)(2)(v) were listed by the director in his request for additional evidence and in his notice of denial.

The petitioner, on appeal, failed to submit evidence to overcome the director's finding 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 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.

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 record in this case reflects that [REDACTED] the petitioner's alleged spouse, is a United States citizen. Although the petitioner failed to submit a legible, certified copy of her marriage certificate, 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 one issue (8 C.F.R. 204.2(c)(1)(i)(G)).

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.