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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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FILE: [Redacted]  
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Office: Vermont Service Center

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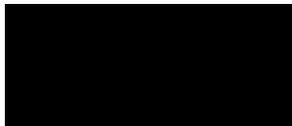
15 AUG 2002

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:



*Handwritten notes and initials*

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 appeal will be sustained.

The petitioner is a native and citizen of Norway 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) 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; (3) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child; and (4) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the Service abused its discretion by: (a) failing to apply proper standards used in adjudicating battered spouse petitions; (b) by ignoring established case law in the areas of battered spouse petitions; (c) by failing to adequately consider all the submitted evidence; and (d) by improperly giving too much weight to minor alleged inconsistencies. Counsel 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 record reflects that the petitioner married her United States citizen spouse on April 26, 1992 at Cairo, Egypt. The petitioner last entered the United States as a visitor on February 7, 1995. On February 8, 1999, 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)(F) requires the petitioner to establish that she is a person of good moral character.

The director determined that the petitioner failed to submit any evidence of good moral character although she was requested on March 22, 1999 to submit additional evidence.

On appeal, the petitioner submits a criminal record check by the State of California, Department of Justice, dated February 15, 2001, indicating that a search of the petitioner's fingerprints reveals no criminal history record in their files; a copy of the Federal Bureau of Investigation (FBI) report dated March 15, 2001, indicating that the petitioner has no arrest record; a letter from the Culver City Police Department, California, dated January 8, 2001, indicating that they have searched the criminal files of the department and no local record of arrest was found; and a transcript of the police records of Oslo, Norway, indicating that the petitioner has no criminal record. The petitioner has, therefore, overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

#### PART II

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. That discussion will not be repeated here. The director, however, noted that no documentary evidence was received with the petitioner's response in support of any claims made in her statement, and that the Form I-130 filed by Mr. [REDACTED] (petitioner's spouse) and the copy of Mr. [REDACTED] withdrawal letter were not consistent with the initial time frame that the petitioner provided regarding her relationship with Mr. [REDACTED]

On appeal, counsel states that the director pointed out some discrepancies between dates in the petitioner's previous statements; however, those events took place some time ago, and the petitioner's memory of exactly when those events took place is somewhat clouded due to the nature of the events. Counsel asserts that it is quite clear that the petitioner and her ex-husband have resided together in both Israel and Los Angeles following their marriage in 1992, that she intended to start their lives together, and that she was battered during her residence with Mr. [REDACTED] in Israel and Los Angeles. To establish the existence of a good-faith marriage, counsel submits:

(1) A declaration from the petitioner;

(2) 2 letters from the City of Los Angeles concerning parking citations addressed to the petitioner and her spouse at their Los Angeles address;

(3) a declaration from the petitioner's father indicating that he traveled from Norway to Jerusalem a week after the wedding ceremony to attend the grand celebration at the National Hotel in East Jerusalem, and that the petitioner gave up her career with the United Nations in order to join her spouse in Los Angeles;

(4) a declaration from the applicant's sister indicating that she travel from France to Jerusalem a week after the wedding ceremony to attend the grand celebration in Jerusalem, and that the petitioner gave up her career with the United Nations in order to join her spouse in Los Angeles;

(5) a declaration from the petitioner's daughter indicating that she stayed with the petitioner and her spouse at their home in S. Redondo Boulevard, she knows her mother married Mr. [REDACTED] in good faith and she gave up her career in the United Nations to join her husband because she was very committed to their marriage;

(6) a copy of the petitioner's appointment schedule with Dr. Resnick in which the applicant is shown as a beneficiary on Mr. [REDACTED] health insurance plan;

(7) a letter from Den Norske Bank in Luxembourg, dated November 23, 1993, addressed to Mr. [REDACTED], indicating that the petitioner authorized Mr. [REDACTED] and her sister to have access to her bank account;

(8) a letter from Den Norske Bank in Luxembourg, dated February 13, 1996, confirming the petitioner's request of December 1, 1995 to withdraw Mr. [REDACTED] name from her account;

(9) a copy of the Schedule of Assets and Debts from the petitioner's divorce proceedings showing that the petitioner and Mr. [REDACTED] amassed a vast number of community property during their marriage;

(10) a copy of Mr. [REDACTED] Responsive Declaration to Order to Show Cause or Notice of Motion dated February 1, 1996, indicating that he and the petitioner lived together in Israel and Los Angeles, that they traveled together during their marriage, that he used her car to travel to and from work, and that he was the person who actually urged the petitioner to apply for her "green card" and work permit.

These documents, in conjunction with other documentary evidence contained in the record of proceeding, are sufficient evidence to establish that the petitioner entered into the marriage to the citizen in good faith. The petitioner has, therefore, overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

### PART III

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 qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

[T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director reviewed and discussed the evidence furnished by the petitioner. That discussion will not be repeated here. The director noted that the petitioner's own recent statement went into some detail regarding her relationship to Mr. [REDACTED] and from that statement, it appeared that qualifying abuse may have occurred; however, although the petitioner referenced many people who were of assistance to her, including two friends who helped her flee and others who saw bruises on her, the record contained no information from any of those persons.

On appeal, counsel asserts that the petitioner was battered or subjected to extreme cruelty during residence with her spouse. He submits:

(1) A declaration from the petitioner describing the physical battery and extreme cruelty perpetrated by Mr. [REDACTED] while they were married and residing together in Israel and Los Angeles;

(2) a declaration from the petitioner's son who resided with the petitioner and her spouse in Israel and personally witnessed his mother being battered and subjected to extreme cruelty by Mr. [REDACTED]

(3) declarations from [REDACTED] and [REDACTED] the petitioner's friends, declaring that they personally saw the bruises and black eye that the petitioner received as a result of

the battery perpetrated by Mr. [REDACTED] and that they were present on the day the petitioner moved out of her home to escape Mr. [REDACTED] abuse on December 8, 1995;

(4) a copy of a police report taken on December 12, 1995 by the Los Angeles Police Department after Mr. [REDACTED] threatened the petitioner on December 5, 1995, that he would "kill her and get away with it;"

(5) a copy of an application for a restraining order filed in court on December 14, 1995 by the applicant against Mr. [REDACTED]

(6) a copy of the petitioner's Supplemental Declaration in Support of Order to Show cause for Domestic Violence Restraining Order filed in court on December 28, 1995. The declaration details incidence of abuse as well as death threat that Mr. [REDACTED] made against the petitioner.

Based on the evidence in the record, it is concluded that the petitioner has established that she has been subject of extreme cruelty as defined in 8 C.F.R. 204.2(c)(1)(vi). The petitioner has overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

#### PART IV

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.

8 C.F.R. 204.2(c)(1)(i)(A) provides that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. Additionally, 8 C.F.R. 204.2(c)(1)(ii) provides that the self-petitioner must be legally married to the abuser when the petition is properly filed with the Service.

The director determined that the petitioner has failed to establish extreme hardship if she were to be removed from the United States. He further determined that the petitioner was divorced from her U.S. citizen spouse prior to the filing of the self-petition; consequently, no petitionable relationship existed between the petitioner and her spouse when the petition was filed.

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 United States citizen is no longer required (1) to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child, and (2) to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal

termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. 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 dismissing the appeal in this case. For this reason, the appeal will be decided on the basis of section 204(a)(1)(A)(iii) as amended by section 1503.

Accordingly, as the law that exists at the time of this decision does not require the petitioner to show that her removal from the United States would result in extreme hardship to herself or to her child, the petitioner has, therefore, overcome the finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

Additionally, the record in this case reflects that the marriage of the petitioner and her citizen spouse legally ended through divorce on September 1, 1997, less than two years prior to the filing of the self-petition on February 8, 1999. The record further reflects that there was a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. The applicant has, therefore, overcome the finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(A).



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. As the director did not raise any other basis for denial, the appeal will be sustained.

**ORDER:** The appeal is sustained, and the petition is approved.