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U.S. Department of Justice  
Immigration and Naturalization Service

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



15 AUG 2002

FILE: [Redacted]  
EAC 01 165 50776

Office: Vermont Service Center

Date:

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 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, 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 England 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 is a person of good moral character. The director, therefore, denied the petition.

On appeal, the petitioner submits additional evidence.

8 C.F.R. 204.2(c)(1) 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 first arrived in the United States as a visitor in May 1982. The petitioner married her United States citizen spouse on November 25, 1987 at Los Angeles, California, the couple subsequently divorced, and they remarried on June 5, 1992 at Los Angeles, California. On April 2, 2001, 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.

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 three-year period immediately preceding the filing of the self petition.

The director determined that the petitioner had failed to establish good moral character because the record reflects that the petitioner apparently had a previous arrest and although she stated that a letter of clearance from Los Angeles and from Sacramento, California, are forthcoming, her response did not include the police clearance letters from either Los Angeles or Sacramento.

On appeal, the petitioner submits the letter of clearance from the County of Los Angeles Sheriff's Department Headquarters indicating that they have no record of the petitioner with the department for the last 3 years, but that she has a record of arrest in Los Angeles on December 25, 1995.

The record of proceeding contains the records of the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, reflecting that the petitioner was arrested on December 25, 1995, and charged with the offense of inflicting corporal injury on spouse, in violation of California Penal Code 273.5(a). On December 27, 1995, the petitioner entered a plea of nolo contendere to the charge, and the court found the petitioner guilty of the crime. Imposition of sentence was suspended and the petitioner was placed on probation for a period of 36 months, with condition that she serves 3 days in the county jail, pays \$200 fine

and \$100 restitution, and completes a 12-month domestic violence program.

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 may file a self-petition, despite an arrest and/or conviction, if the criminal act constitutes a ground of inadmissibility or deportability that is waivable, and the act was connected to domestic violence. *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.

The court record in this case reflects that the acts were connected to domestic violence. While the court record further reflects that the petitioner was convicted of a misdemeanor offense, California

Penal Code 273.5(a) states, "[a]ny person who willfully inflicts upon his or her spouse, . . . corporal injury resulting in a traumatic condition, is guilty of a felony. . . ." Spousal/domestic abuse is a crime involving moral turpitude. Grageda v. INS, 12 F.3d 919 (9th Cir. 1993) Calif. Penal Code 273.5(a) [willful infliction of an injury upon a spouse, cohabitant, or parent of the perpetrator's child is a based and depraved act and is classified as a CIMT.]

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character during the three-year period immediately preceding the filing of the petition. The self-petition, in this case, was filed on April 2, 2001; the applicant was convicted on December 27, 1995.

As provided in section 1503(b), as shown above, a self-petitioner may file a self-petition, despite an arrest and/or conviction, if the criminal act constitutes a ground of inadmissibility or deportability that is waivable, and the act was connected to domestic violence.

The case will, therefore, be remanded so that the director may accord the petitioner an opportunity to file a waiver of grounds of inadmissibility as provided in section 1503(b). The director shall enter a new decision regarding the Form I-360 petition which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review, and without fee.

It is noted for the record that the self-petitioner claimed she is infected with HIV (human immunodeficiency virus), and may render the petitioner inadmissible to the United States pursuant to section 212(a)(1)(A)(i) of the Act (the Act), 8 U.S.C. 1182(a)(1)(A)(i). The Service must address this claim of the petitioner in any future decisions or proceedings.

**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.