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Immigration and Naturalization Service

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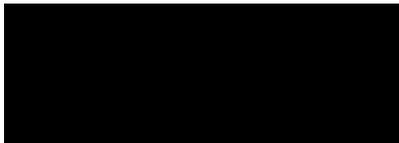


FILE: [Redacted]  
EAC 01 207 54860

Office: Vermont Service Center

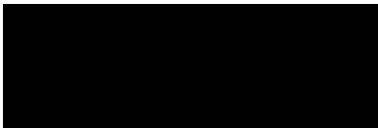
Date: JUL 08 2002

IN RE: Petitioner:  
Beneficiary:



APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the  
Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER:



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 approved by the Director, Vermont Service Center, who certified his decision to the Associate Commissioner, Examinations, for review. The director's decision will be affirmed.

The petitioner is a native and citizen of Western Samoa who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director approved the petition after determining that the petitioner's spouse, a native and citizen of American Samoa, has rights "at least equal to" those of a lawful permanent resident and has the right to petition for lawful permanent resident status for family members as held in Matter of B--, 6 I&N Dec. 555 (BIA 1955), and in Matter of Ah San, 15, I&N Dec. 315 (BIA 1975). The director further determined that the petitioner has, therefore, overcome his previous findings that the petitioner failed to establish that she 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).

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 record reflects that the petitioner entered the United States as a visitor on May 7, 1981. The petitioner married [REDACTED] a citizen of American Samoa and a national of the United States, on December 3, 1983 at Seattle, Washington. On June 15, 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 spouse during their marriage.

Pursuant to section 101(a)(22), the term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. Pursuant to section 101(a)(29), the term "outlying possessions of the United States" means American Samoa and Swains Island.

The Board of Immigration Appeals, in Matter of Ah San, supra, concurred with the conclusion of the immigration judge that Matter of B--, supra, stands for the proposition that, although a noncitizen national of the United States does not have the rights to a citizen, he or she is accorded certain rights and privileges by reason of being a national which are at least equal to those of an alien who has been lawfully admitted to the United States for permanent residence. The Board also concurred in the judge's observation that the rights of a noncitizen national are greater than those of a lawful permanent resident because a noncitizen national is not subject to the definition of "lawfully admitted for permanent residence" contained in section 101(a)(2) of the Act, nor is a national subject to the exclusion and deportation provisions of the Act.

Accordingly, as provided in Matter of Ah San and by section 101(a)(22), the petitioner's spouse, a national of the United States, has the right to petition for lawful permanent resident status for family members. The petitioner, therefore, meets the eligibility requirements as provided in 8 C.F.R. 204.2(c)(1)(i)(A).

The decision of the director to approve the petition will be affirmed.

**ORDER:** The director's decision is affirmed.