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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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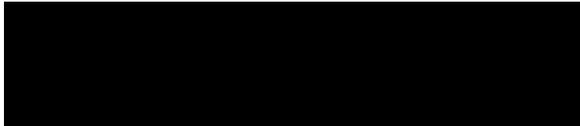


FILE: [Redacted]  
EAC 01 099 51055

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)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER: Self-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 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 submit evidence as had been requested to establish that she is a person of good moral character. The director, therefore, denied the petition.

On appeal, the petitioner states that she did not timely receive the director's request for additional evidence of good moral character. She submits additional evidence.

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.

The petitioner submits a letter from the City of Virginia Beach Police Department indicating that the applicant was arrested on April 5, 2000 for assault and battery-family matter, and that the case is pending in court until August 12, 2002. The record of proceeding also contains the complaint against the petitioner for charges of assault and battery on [REDACTED] (the petitioner's stepchild) on February 6, 2000, and on [REDACTED] (the petitioner's husband) on August 18, 1999, filed in court on April 5, 2000. The petitioner states that these charges were brought about by her husband as a specific act of retaliation against her by her husband after the petitioner left him and she had him charged for assault and battery. She claims that she is returning to court on August 12, 2002 for a hearing on the dismissal of these charges.

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).

The complaints filed against the petitioner on April 5, 2000, reflect that the acts were connected to domestic violence, and that the cases are pending in court until August 12, 2002. The case will, therefore, be remanded so that the director may determine if the petitioner indeed overcomes the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(F) subsequent to the petitioner's court hearing on August 12, 2002. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review, and without fee.

**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.