



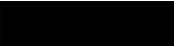
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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
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Washington, D.C. 20536

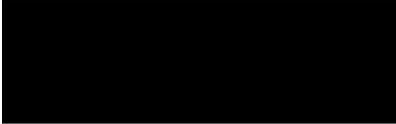


FILE:   
EAC 01 115 53622

Office: Vermont Service Center

Date: 25 JUL 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-represented

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, 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 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 is the spouse of a citizen of the United States pursuant to 8 C.F.R. 204.2(c)(1)(i)(A) because her spouse died on July 31, 1997; therefore, no petitionable relationship existed between the petitioner and her spouse at the time of filing the self-petition. The director, therefore, denied the petition on April 18, 2001.

On appeal, the petitioner states that this case is combined with EAC-00-158-52702 filed on April 29, 1997, establishing a prima facie case for adjudication as the victim of abuse prior to the death of the petitioner's spouse on July 31, 1997. The petitioner asserts that the director's decision is groundless because requirement of marriage to the deceased abusive spouse was amended on October 28, 2000.

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 claiming to qualify for immigration as the battered spouse of a United States citizen may file a self-petition if the alien demonstrates that he or she was a bona fide spouse of a United States citizen within the past 2 years and whose spouse died within the past 2 years. *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 record in this case reflects that the self-petition was filed on February 26, 2001, more than two years after the death of the petitioner's spouse on July 31, 1997. The director, in this proceeding, is correct in his finding that the petitioner is ineligible for the benefits sought.

However, it appears that this petition was submitted by the petitioner with other documentation as a rebuttal or as an appeal to the petitioner's originally filed I-360 self-petition on April 29, 1997 (EAC-00-158-52702). This petition was denied by the



director on January 8, 2001, because the petitioner failed to establish the existence of a good-faith marriage pursuant to 8 C.F.R. 204.2(c)(1)(i)(H). The documents of record contain what appears to be an appeal filed by the petitioner.

The case will, therefore, be remanded so that the director may review the record of proceeding and determine whether the documentation previously furnished by the petitioner was in fact an appeal to the director's earlier proceeding and decision of January 8, 2001, regarding the petitioner's failure to establish good-faith marriage, and to consider this issue based on the previously furnished documentation. 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.