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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



FILE: [Redacted] Office: Vermont Service Center Date: AUG 15 2003
EAC 01 196 50113

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

ON BEHALF OF PETITIONER: Self-represented

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office 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 eligibility for the benefit sought because he was divorced from his allegedly abusive U.S. citizen spouse for more than two years prior to the filing of the self-petition. The director, therefore, denied the petition.

On appeal, the petitioner asserts that the denial of the I-360 petition is not supported by the record created as of October 30, 1996, the date of submission of the initial I-360 petition docketed under EAC-97-024-50835. He states that the I-360 petition was timely filed within the two years after his divorce in 1995, but it was denied on May 14, 1997. The petitioner claims that he had timely appealed this decision and he knows of no decision rendered in this case.

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 arrived in the United States on August 21, 1991. On December 20, 1991, the petitioner was ordered removed from the United States. The petitioner married his United States citizen spouse on November 20, 1992 at Queens, New York. The petitioner's spouse subsequently petitioned for dissolution of the marriage, and the judgment of divorce became effective on December 18, 1995. On May 21, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who had been battered by, or had been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

The record of proceeding contains a copy of a Divorce Judgement, issued on December 18, 1995, by the Supreme Court of the County Courthouse, New York, ordering that the marriage between the petitioner and [REDACTED] be dissolved. The director, therefore, determined that the petitioner failed to establish eligibility for the benefit sought because he was divorced from his U.S. citizen spouse for more than two years prior to the filing of the self-petition on May 21, 2001. He maintained that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed between the date of the legal termination of the marriage and the date of filing of the Form I-360 self-petition.

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 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 two 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).

Although the divorce of the two parties prior to the filing of the petition is no longer a bar as long as there is a connection between the legal termination of the petitioner's marriage within the past two years and battering or extreme cruelty by her spouse, the record reflects that the petitioner and his citizen spouse were divorced on December 18, 1995, and the petitioner filed the instant petition on May 21, 2001, more than two years after the divorce was final. The director is correct in his conclusion.

The record also contains an I-360 self-petition filed on October 30, 1996. The director, on May 14, 1997, denied the petition because the petitioner was divorced from his citizen spouse on December

18, 1995, prior to the filing of the self-petition. The petitioner appealed the director's decision in this case. It appears that this appeal is still pending.

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. § 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. § 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 initial appeal will be decided on the basis of section 204(a)(1)(A)(iii) as amended by section 1503.

Accordingly, the case will be remanded so that the director may request that the petitioner submit evidence which shows a connection between the legal termination of the marriage and battering or extreme cruelty, and review the record of proceeding to determine whether all other criteria listed in 8 C.F.R. § 204.2(c)(1) are satisfied, as to petition EAC-97-024-50835, filed on October 10, 1996. 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.