

**PUBLIC COPY**

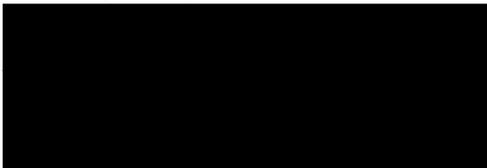
**B9**

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



FILE: [Redacted]  
EAC 98 168 53324

Office: Vermont Service Center

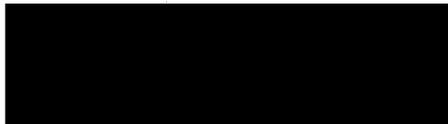
Date: **MAY 13 2003**

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)

ON BEHALF OF PETITIONER:



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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, and the previous decision of the AAO will be affirmed.

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 denied the petition after determining that the petitioner failed to establish that she: (1) 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, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E); and (2) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(G).

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on October 6, 1999.

On motion, counsel asserts that the petitioner's minor child has a record, since birth, of respiratory and pulmonary deficiency which cause him severe and constant admission in hospitals. He submits medical records of the minor child. Counsel further asserts that due to the abuse suffered by her U.S. citizen spouse and the serious health condition of her U.S. citizen child, the petitioner is under treatment of a therapist. He states that a certificate of the evaluation will be included in the near future since it cannot be sent until the complete evaluation is fulfilled.

At the time of the director's decision, 8 C.F.R. § 204.2(c)(1)(i)(G) required the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 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 citizen or resident alien is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *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 case 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 U.S. 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 affirming the director's decision on this particular basis of the director's denial. For this reason, the director's objections have been overcome on this one issue, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(G).

8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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.

The director and the AAO reviewed and discussed the evidence furnished by the petitioner and concluded that the evidence was insufficient to establish that she and her child had been battered by, or had been the subject of extreme cruelty perpetrated by the citizen spouse during the marriage.

On motion, the petitioner has provided no evidence to show that she has been the subject of extreme cruelty, as provided in 8 C.F.R. 204.2(c)(1)(i)(E), and to overcome the findings of the director and the AAO.

Accordingly, the decision of the AAO dated October 6, 1999, will be affirmed.

**ORDER:** The decision of the AAO dated October 6, 1999, is affirmed.