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**U.S. Citizenship  
and Immigration  
Services**

B9



FILE:



Office: SAN ANTONIO

Date: JUL 28 2004

IN RE:

Petitioner:  
Beneficiary:



PETITION: 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 of the Administrative Appeals Office 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.

*Cindy N. Gomez for*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico 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 district director determined that the petitioner was ineligible for the benefit sought because she was divorced from her U.S. citizen spouse on September 16, 1996, prior to the filing of the self-petition on October 8, 1996. The district director, therefore, denied the petition.

On appeal, counsel asserts that the district director erred in denying the self-petition. He states that it is the petitioner's position that the regulation at 8 C.F.R. § 204.2(c)(1)(ii), which was cited in the Service's [now Citizenship and Immigration Services (CIS)] decision to deny, is in direct contradiction to the intent and spirit of the law.

8 C.F.R. § 204.2(c)(1), in effect at the time the self-petition was filed, 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 Form I-360, Petition for [REDACTED] or Special Immigrant, shows that the petitioner arrived in the United States on November 21, 1995. However, her current immigration status or how she entered the United States was not shown. While the petitioner's marriage certificate and her spouse's birth certificate are not contained in the record of proceeding, the Form I-360 shows that the petitioner married [REDACTED] a citizen

of the United States, on June 10, 1994, at Laredo, Texas. The petitioner's spouse subsequently petitioned for dissolution of the marriage, and the judgment of divorce became effective on August 19, 1996. On October 8, 1996, 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, her U.S. citizen spouse during their marriage.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her U.S. citizen spouse prior to the filing of the self-petition.

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.

On October 28, 2000, the President approved the 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) of the Act to read, in pertinent part, as follows:

(iii)(I) Any alien who is described in subclause (II) may file a petition with the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] under this clause for classification of the Alien (and any child of the alien) if the alien demonstrates to the Attorney General [the Secretary] that...

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien...

(aa) (AA) who is the spouse of a citizen of the United States;

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and...

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse...

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). Here, the petitioner filed the Form I-360 on October 8, 1996. Even if the law changes in a way that may benefit the petitioner, the appeal must be denied to ensure that the petitioner does not gain an advantage over other petitioners.

The record in this case reflects that the marriage of the petitioner and her citizen spouse legally ended through divorce on August 19, 1996, prior to the filing of the self-petition on October 8, 1996. 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, in this case, does not contain evidence to show that there was a connection between the legal termination of the marriage and battering or extreme cruelty. Likewise, the record of proceeding is devoid of any evidence to show that the petitioner, in fact, had been battered by, or had been the subject of extreme cruelty perpetrated by her U.S. citizen spouse during the marriage; or that she is the parent of a child who had been battered by, or had been the subject of extreme cruelty perpetrated by the U.S. citizen during the marriage, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E).

Accordingly, the applicant has failed to establish eligibility for the benefit sought and to overcome the findings of the district director pursuant to 8 C.F.R. § 204.2(c)(1)(i)(A).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.