PSY

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: AUG 2 2001
EAC 98 223 52220

IN RE: Petitioner: [redacted]
Beneficiary:

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER:

[redacted]

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dentifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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, Acting 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 appeal will be dismissed.

The petitioner is a native and citizen of Venezuela who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she: (1) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child; and (2) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner states that she has been residing in this country for many years, and that she and her husband never had a bank account because of the problems between them. She further states that she did live with her husband for love, and not for convenience.

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 petition, Form I-360, shows that the petitioner arrived in the United States during October 1989. However, her current immigration status or how she entered the United States was not shown. Although the petitioner's marriage certificate is not contained in the record of proceeding, the Form I-360 shows that the petitioner married her permanent resident spouse on [redacted]. On July 28, 1998, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her lawful permanent resident spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen or lawful permanent resident in good faith.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the director's requests for additional evidence on July 6, 2000. He noted that while the evidence furnished indicates that she and her spouse shared a residence and that they were married in the presence of family, the documents, however, do not provide sufficient evidence to establish that she intended to share a life together. The director, therefore, determined that based on the evidence submitted, the record does not contain satisfactory evidence to demonstrate that the petitioner qualifies under this requirement.

While the petitioner, on appeal, states that she did live with her husband for love, and not for convenience, no additional evidence was furnished to establish that she entered into the marriage to her permanent resident spouse in good faith, and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself, or to her child.

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(c), 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 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. These decisions bind the Service. 8 C.F.R. § 3.1(g). As required by Atembe, Drigo, and Bardouille, therefore, the director's decision on this basis is affirmed, as the documentation presented by the petitioner has failed to overcome the finding that she would not suffer extreme hardship upon return to Venezuela.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.