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110TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–826

FOR THE RELIEF OF KUMI IIZUKA-BARCENA

SEPTEMBER 8, 2008.—Referred to the Private Calendar and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5243]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5243) for the relief of Kumi Iizuka-Barcena, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 5243 would make Kumi Iizuka-Barcena eligible for adjustment of her status to that of a permanent resident.

BACKGROUND AND NEED FOR THE LEGISLATION

Kumi Iizuka was born on October 28, 1965, in Shibukawa Gumma, Japan. She is currently 42 years old. She entered the United States on an F-1 student visa in 1992. She received a bachelor's degree from West Virginia Wesleyan College and a master's degree from the University of Hartford. In 1998, Ms. Iizuka began working for Elcom, Inc., pursuant to an H-1B specialty worker visa.

While in the United States on the H-1B visa, Ms. Iizuka met and fell in love with Andrew Barcena, a U.S. citizen. She married Mr. Barcena on July 29, 2004, while he was training to be a police officer for the El Paso Police Department. A few weeks later, on August 16, 2004, Mr. Barcena filed immigration petitions for his wife (now Kumi Iizuka-Barcena) based on their marriage (Form I-130, Petition for Alien Relative, and Form I-485, Application for Permanent Residence).

Mr. Barcena graduated from the police academy on August 26, 2004. Just 1 month later, in the early morning hours of September 25, he was shot and killed while attempting to subdue an aggressive spouse during a domestic disturbance call.

Mr. Barcena died before the Department of Homeland Security (DHS) could process and approve the immigration petitions that he had filed on his wife's behalf. Due to the circumstances, however, DHS granted Ms. Iizuka-Barcena deferred action status along with employment authorization. She was thus able to stay in the U.S., where she continued to care for Andrew's father, who was a diabetic and suffered partial paralysis due to a stroke.

In June 2006, less than 2 years after her husband's death, Ms. Iizuka-Barcena was diagnosed with breast cancer. She immediately had surgery to remove cancerous tissue from her breasts, and she required a second procedure when doctors discovered another lump in her breasts. She also engaged in months of chemo and radiation therapy, and she is now on a hormone medication regimen.

Due to the circumstances in Ms. Iizuka-Barcena's case, DHS has granted her deferred action status on an annual basis. As with a stay of removal, grants of deferred action status are temporary and discretionary. Ms. Iizuka-Barcena has no basis to immigrate to the United States other than a private bill.

On February 26, 2008, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law requested, in accordance with its customary practice for private immigration bills, that DHS' Office of Immigration and Customs Enforcement (ICE) provide the Subcommittee with information regarding Ms. Iizuka-Barcena relevant to the bill. ICE's report, submitted to the Subcommittee on June 13, 2008, contained no derogatory information about Ms. Iizuka-Barcena. The ICE report is reprinted in full in the "Agency Views" section below.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 5243.

COMMITTEE CONSIDERATION

On July 10, 2008, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law met in open session and ordered the bill, H.R. 5243, favorably reported,

without amendment, by voice vote, a quorum being present. On July 30, 2008, the Committee met in open session and ordered the bill, H.R. 5243, favorably reported without amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 5243.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5243, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:(r)MDNM

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 1, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5243, a bill for the relief of Kumi Iizuka-Barcena.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 5243—A bill for the relief of Kumi Iizuka-Barcena.

H.R. 5243 would make Kumi Iizuka-Barcena eligible for permanent residence in the United States. CBO estimates that enacting

this legislation would have no significant impact on the Federal budget.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.(r)MD23

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5243 would make Kumi Iizuka-Barcena eligible for adjustment of her status to that of a lawful permanent resident.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 4 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5243 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Permanent Resident Status for Kumi Iizuka-Barcena. Subsection (a) provides that, notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Kumi Iizuka-Barcena is eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of such Act or for adjustment of status to lawful permanent resident.

Subsection (b) provides that if Kumi Iizuka-Barcena enters the United States before the filing deadline specified in subsection (c), she must be considered to have entered and remained lawfully and, if otherwise eligible, be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of the enactment of this Act.

Subsection (c) provides that subsections (a) and (b) apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of the enactment of this Act.

Subsection (d) provides that, upon the granting of an immigrant visa or permanent residence to Kumi Iizuka-Barcena, the Secretary of State must instruct the proper officer to reduce by one, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of the alien's birth under section 202(e) of such Act.

AGENCY VIEWS

The report from the Department of Homeland Security's Office of Immigration and Customs Enforcement on H.R. 5243 is set forth below:

Office of Congressional Relations

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration
and Customs
Enforcement

JUN 13 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship,
Refugees, Border Security, & International Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20510

Dear Madam Chairwoman:

In response to your request for a report relative to H. R. 5243, private legislation for the relief of Kumi Iizuka-Barcena, enclosed is a memorandum of information concerning the beneficiary.

The bill provides that the beneficiary shall be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of the Immigration and Nationality Act or for adjustment of status to lawful permanent resident.

We hope the information provided is useful. Please do not hesitate to call me if you have additional questions.

Sincerely,

Jamie E. Zuieback
Director
Office of Congressional Relations

Department of Homeland Security
Immigration and Customs Enforcement
Memorandum of Information for HR 5243, 110th Congress

Kumi Iizuka-Barcena is the beneficiary of HR 5243, introduced by Rep. Silvestre Reyes (D-TX) on February 6, 2008. Kumi Iizuka-Barcena is a native and citizen of Japan, born on October 28, 1965, in Shibukawa, Gumma, Japan. She currently resides at 12174 Royal Woods Drive, El Paso, Texas 79936.

Kumi Iizuka-Barcena was first admitted to the United States in 1992 as a student on an F1-Visa at Western Virginia Wesleyan College where she graduated in 1994 with a Bachelor's Degree in Psychology. Ms. Iizuka-Barcena returned to Japan in 1994. In 1995, Ms. Iizuka-Barcena returned to the United States and attended the University of Hartford where she graduated in 1997 with a Master's Degree in Psychology.

In 1997, Ms. Iizuka-Barcena was recruited by ELCOM Inc. of El Paso located at 20 Butterfield Trail, El Paso, Texas 79925 as a translator, where she remained employed for seven years on an H1B visa, alien in a specialty occupation. The Central Index Systems showed that throughout her employment Kumi Iizuka-Barcena's employer, ELCOM Inc., continually filed the necessary documentation required by the Citizenship and Immigration Service that authorized her to work and remain in the United States.

On August 2, 2004, Kumi Iizuka and Angel A. Barcena were married in the City of El Paso, County of El Paso, Texas. Angel A. Barcena was a United States Citizen and an El Paso Police Officer. A Petition for Alien Relative (I-130) and an Application to Register Permanent Residence or Adjust Status (I-485) were filed by Angel A. Barcena; the application has a date stamp of August 18, 2004 as received by the mail room of the Citizenship and Immigration Services (CIS) in El Paso, Texas. The application fee stamp is dated August 24, 2004.

Officer Angel A. Barcena was killed in the line of duty on September 25, 2004. In anticipation of the above petitions being denied and the period of admission for Ms. Iizuka-Barcena under her H1B status expiring on October 2, 2004, making her deportable under Section 237(a)(1)(B) of the Immigration and Nationality Act, non-immigrant overstay, Ms. Iizuka-Barcena's attorney faxed a letter to CIS El Paso District Office on September 28, 2004, requesting an Indefinite Humanitarian Parole to allow Ms. Iizuka-Barcena to remain in the United States. On October 1, 2004, a letter from CIS was sent to Patricia B. Chew, attorney for Ms. Iizuka-Barcena, granting a humanitarian parole for sixty days.

On September 30, 2004, Attorney Patricia B. Chew faxed a letter to CIS El Paso District Office requesting a Deferred Action status. CIS granted Deferred Action on October 5, 2004, for one year. CIS granted Ms. Iizuka-Barcena Deferred Action for additional one year increments in September, 2005; October, 2006; January, 2007; and February, 2008. Additionally, Ms. Iizuka-Barcena received authorization to work from February 20, 2007, until February 19, 2008. On June 20, 2005, the applications were denied upon the death of Officer Angel Barcena because there was no longer a marital relationship between the petitioner and beneficiary.

On March 5, 2008, ICE Special Agents interviewed Kumi Iizuka-Barcena concerning HR 5243. Also present was her attorney, Patricia B. Chew. Ms. Iizuka-Barcena stated that she had met her husband, Angel Barcena, through a mutual acquaintance, Gina, who happened to be the hairdresser for both of them. She and her husband had been dating approximately six months before they were married. She and her husband lived together prior to the marriage in August, 2004. Ms. Iizuka-Barcena stated the wedding was small with just friends and family. After the death of her husband she continued to live in the same apartment she shared with her husband and father-in-law, Ricardo Barcena Sr. She later moved out to give her father-in-law his privacy. She still remains in contact with her husband's family. After her husband's death Ms. Iizuka-Barcena sought counseling to help her cope with her depression for approximately a year. Ms. Iizuka-Barcena stated she left her employment with ELCOM Inc., due to the death of her husband.

Ms. Iizuka-Barcena stated that in 2006 she was diagnosed with breast cancer and underwent surgery, chemotherapy and radiation; she is currently seeing an Oncologist every three months as part of her recuperation. Ms. Iizuka-Barcena stated she is currently a teacher at the Japanese Supplementary School in El Paso, Texas. She also obtained a license as a massage therapist and opened her own business. Ms. Iizuka-Barcena stated she hopes to eventually obtain her Doctorate in Psychology, but does not have any immediate plans. Ms. Iizuka-Barcena does not have any immediate family in the United States. Her family is currently living in Japan and she keeps in communication with them through the telephone and email.

As part of the background investigation for this report, ICE Special Agent Lillian Garcia and Special Agent Aida Cervera interviewed Ms. Iizuka-Barcena's extended family members, co-workers, friends and employer. There was no derogatory information received from any family members, co-workers, friends and employers.

On March 1, 2008, ICE Special Agents interviewed Ricardo Barcena Jr., brother of slain Officer Angel Barcena. Mr. Barcena stated he has known Kumi for two years. Mr. Barcena met Ms. Iizuka-Barcena two months before she married his brother, Officer Barcena. He stated that his brother met Kumi through his brother's hairstylist. Mr. Barcena stated he met Kumi's family when they attended Officer Barcena's funeral. He stated that they still have occasional contact with Kumi. Mr. Barcena stated that Kumi is a massage therapist with her own practice. He does not know of any legal or mental problems she may have had. He stated she is a hardworking person and would be a contribution to society.

On March 5, 2008, ICE Special Agents interviewed with Mr. Yuji Ohashi, principal of the Japanese Supplementary School where Kumi Iizuka-Barcena works. The courses taught at the school stem from mathematics, Japanese writing and history; the curriculum taught maintains the standards established by the Japanese Government. Mr. Ohashi stated that Ms. Iizuka-Barcena was working at the school prior to his arrival in 2006. Mr. Ohashi stated that Ms. Barcena was recommended to the school by the Yazaki Corp. He stated that

Ms. Iizuka-Barcena is a reliable employee who is always on time and has never been disciplined. He stated that Ms. Iizuka-Barcena has not had any problems with other employees or students. Mr. Ohashi stated he is willing to provide letters of recommendation if needed.

On this same day, ICE Special Agents interviewed Kioko Vida a friend and former co-worker. Ms. Vida stated she has known Kumi since 1997 when Kumi started working at ELCOM. Their relationship started as co-workers then developed into a friendship outside the company. She and Kumi maintain contact with each other mainly through the telephone because of their work schedules. She stated she met Kumi's deceased husband a few months before the marriage. Ms. Vida stated that Kumi and Angel were dating less than a year before they were engaged and married. She knew Kumi had met Angel through a mutual friend at a hair salon. Ms. Vida stated Kumi was a hard worker and a quiet person while employed at ELCOM.

On this same day, ICE Special Agents interviewed Rosemarie Martin a friend and former co-worker and supervisor of Ms. Iizuka-Barcena. Ms. Martin stated she has known Kumi since 2002 while she was a secretary within a department at ELCOM Inc. She stated that Kumi was a translator for many managers at the company. She stated Ms. Iizuka-Barcena would translate for several departments. She stated that Ms. Iizuka-Barcena is a quiet person, good worker, and a good person. She does not know of any problems Ms. Iizuka-Barcena may have.

On March 6, 2008, ICE Special Agents interviewed Ricardo Barcena Sr., father of Officer Barcena and father-in-law of Ms. Iizuka-Barcena. Mr. Barcena stated that his son, Angel, was very happy when he met Kumi. He stated that his son and Kumi lived with him while they were married. Mr. Barcena stated that after his son's death Kumi became ill, she lost a lot of weight and was depressed. He later found out the Kumi was diagnosed with cancer. He stated Kumi still calls him and visits him and his family occasionally. Mr. Barcena stated Kumi is a very intelligent individual and a quiet person.

On March 7, 2008, ICE Special Agents interviewed Linda Molina. Ms. Molina is currently an El Paso Police Officer. She is a liaison between the El Paso Police Department and the family of slain Officer Angel Barcena. Ms. Molina stated she met Kumi and her family during the funeral preparations. She stated that she recalled Kumi speaking of how she met Angel through a mutual friend approximately a year prior to their marriage. Ms. Molina stated she knows that Kumi is a very kind hearted and gentle person.

On this same day, ICE Special Agents interviewed CIS Adjudications Officer Mary Orozco regarding Kumi Iizuka-Barcena's case. Officer Orozco stated that Ms. Iizuka-Barcena is currently on deferred action status and will possibly remain indefinitely deferred as long as Ms. Iizuka-Barcena continues to file for deferred status. Officer Orozco reviewed the file and stated the following as to the actions of the department in this case. The I-130 application was automatically denied upon the death of Officer Angel Barcena because an interview to establish the relationship was not done prior to the petitioner's death, the petitioner being Officer Angel Barcena. Because the I-130 application was denied the I-485 application to adjust to residency

status was then also denied. Officer Orozco added that the marriage was not within the two year period required for re-instating the I-130 application or to self petition as a widow. Officer Orozco stated that Ms. Iizuka-Barcena will not be able to adjust her status unless a new petitioner applies for her.

Ms. Iizuka Barcena is currently working at the Japanese Supplementary School of El Paso as a teacher and has her own business as a massage therapist. According to her 2006 Individual Income Tax Return she has a combined income of $25,473.00 per year. Bank statements dated February 19, 2008, provided by Ms. Iizuka-Barcena show she has a CD, a checking and a saving account. She also receives a weekly death benefits check from the City of El Paso.

Criminal history queries were conducted through standard databases, and no criminal history or derogatory information was found regarding Kumi Iizuka-Barcena.

ADDITIONAL VIEWS

Meritorious private bills should either represent unique and compelling circumstances or fit within private bill precedent of the modern era (from the 97th Congress onward, following the ABSCAM private bill scandal).

There is precedent in the modern era for the enactment of private bills where the alien spouse of an American citizen lost the right to immigrate because of the death of the American citizen before the approval of the petition for conditional permanent residence for the alien (usually, but not always, there was also a U.S. citizen child involved). Congress has also passed private bills where the beneficiary was the spouse of a U.S. citizen or legal alien who died while in service to the United States (such as in the military or the State Department).

A DHS report on Ms. Iizuka-Barcena was received on June 13, 2008, and contained no derogatory information. Because H.R. 5243 fits within private bill precedent and the DHS report contained no derogatory information, this is a meritorious private bill.

LAMAR SMITH.