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WASHINGTON, DC 20510-4504

332 SENATE DIRKSEN OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5141

1 CHURCH STREET, 2ND FLOOR
BURLINGTON, VT 05401
(802) 862-0697
1 (800) 339-9634

www.sanders.senate.gov

August 29, 2011

The Honorable Janet Napolitano
Secretary, Department of Homeland Security
U.S. Naval Security Station
3801 Nebraska Avenue, N.W.
Washington, DC 20393

**RE: Request that the Spousal Petition of Frances Herbert and the Application for Adjustment of Status of Takako Ueda be held in abeyance
I-130 Petition and I-485, I-765, and I-131 Applications
Receipt Numbers: MSC1190616199, MSC1190616200, MSC1190616201, MSC1190616202**

Dear Madam Secretary,

I am writing to inform you that my Vermont District Office has received a request for assistance from my constituent, Ms. Frances Herbert, a U.S. Citizen and her Japanese-born spouse, Ms. Takako Ueda, both of Dummerston, Vermont. Ms. Herbert and Ms. Ueda have requested my assistance concerning Ms. Ueda's current immigration situation.

Ms. Herbert and Ms. Ueda informed my staff that they have been in a stable and committed relationship for 11 years; they held a commitment ceremony in 2000 and were legally married in April of this year in Vermont. Ms. Ueda's student visa expired in July 2011, and unfortunately she will be required to leave the country and forced to be separated from her spouse because their marriage is not recognized by the Federal government for purposes of immigration and other Federal benefits.

Ms. Herbert and Ms. Ueda informed my office that they are filing a Petition for Immediate Relative (I-130) and an Application for Adjustment of Status (I-485) with U.S. Citizenship and Immigration Services (USCIS) and are asking that the Petition and Application be held in abeyance. I ask that you review Ms. Herbert and Ms. Ueda's case and give due consideration to their request to hold the Petition and Application in abeyance pending a legislative repeal of the Defense of Marriage Act (DOMA) or a final determination of Federal court litigation challenging DOMA's constitutionality.

Preserving family unity is a fundamental American value and the cornerstone of our nation's immigration law. However, while six states, including my State of Vermont, and the District of Columbia recognize same-sex marriage, DOMA's discriminatory effect on Federal law continues to have a devastating impact on families like Ms. Herbert and Ms. Ueda.

On February 23, 2011, U.S. Attorney General Holder announced that the President had determined Section 3 of DOMA to be unconstitutional when applied to same-sex married couples. The Attorney General also announced that the Justice Department would no longer defend DOMA in litigation challenging its constitutionality across the country. I applaud the Administration's historic announcement, however, broad continued application of DOMA in the immigration context creates a tier of second-class families in states like Vermont that have authorized same-sex marriage.

In April of this year, twelve of my colleagues in the U.S. Senate wrote you requesting USCIS hold marriage-based immigration petitions of same-sex spouses in abeyance pending a legislative repeal or a final determination on DOMA litigation. Like my colleagues, I believe that even if DHS determines that enforcement of DOMA bars USCIS from issuing green cards to same-sex spouses, it does not require that the spousal petition be denied. Instead, USCIS could hold the Application and Petition in abeyance until DOMA's constitutionality has been settled in the courts or by passage of legislation currently pending in Congress.

In response to my colleagues' April request, on May 17, 2011, your Assistant Secretary, Nelson Peacock, stated that USCIS would, where appropriate, exercise discretion in individual cases based on the unique factors presented by that particular case. Ms. Herbert and Ms. Ueda's case warrants such an exercise of discretion.

I urge USCIS to review the case of my constituent Ms. Herbert and her spouse Ms. Ueda and exercise discretion on behalf of this particular U.S. citizen and her family by holding their Petition and Application in abeyance. Ms. Herbert and Ms. Ueda's commitment and past conduct justify a grant of abeyance. Ms. Herbert and Ms. Ueda solidified their commitment to each other early in their relationship with a commitment ceremony in 2000 surrounded by family and friends. Over a decade later, Ms. Herbert and Ms. Ueda remain committed to each other and in April of 2011, the couple was legally married in the state of Vermont. As a U.S. citizen, Ms. Herbert would be able to sponsor her spouse for lawful permanent residence but for the discriminatory impact of Section 3 of DOMA.

Ms. Herbert and Ms. Ueda informed my staff that Ms. Ueda has maintained her lawful status here for over ten years on a student visa. During this time Ms. Ueda has earned multiple degrees in various fields of study while maintaining her lawful status. In May of 2010, Ms. Ueda graduated *magnum cum laude* with a B.A. from Keene State College earning a degree in graphic design. She then began a period of Optional Practical Training which expired as of July 5, 2011. As an F-1 student who has completed a course of study and authorized practical training following completion of her studies, Ms. Ueda is allowed an additional 60-day period before she is required to depart the United States. Holding Ms. Herbert and Ms. Ueda's Petition and Application in abeyance will allow this Vermont family to stay together pending the resolution of DOMA's constitutionality in the courts.

For Ms. Ueda to be forced to leave her spouse would be devastating to her and would place her in a very difficult situation. I understand from my staff that Ms. Ueda was born and raised in the Niigata Prefecture of Japan and her family continues to live there. If Ms. Ueda is forced to leave the United States, she would return to the Niigata Prefecture, which is in close proximity to Fukushima Prefecture, the site of the March 2011 tsunami and resulting nuclear crisis. Ms. Ueda would return as a middle-aged woman to a country recovering from a devastating disaster, with public health concerns, and an economic downturn. Additionally, Ms. Ueda would return to a social and family structure where being a lesbian is not fully accepted.

Ms. Ueda's departure would also cause hardship to my constituent Ms. Herbert, and the community of Dummerston, Vermont. If Ms. Ueda leaves the U.S., Ms. Herbert will be forced to follow to keep her marriage intact, and move to a country where she has no ties, no job, and where she will be unable to speak the language. Ms. Herbert is a critical community member in her home town of Dummerston, Vermont and the surrounding communities where she provides elder care services. As laid out in an affidavit written by my constituents, Dr. Adrian Segar and Celia Segar, included in this family's petition and application to USCIS, Ms. Herbert's care for senior Vermonters has allowed community residents to remain in their homes rather than moving into retirement homes. The Segars write:

If Ms. Ueda had to leave the United States, Ms. Herbert would certainly follow her abroad, which would be a great loss to us and our community. Vermont would lose a unique woman whose gifts have

contributed so much to us and so many in our community through some of the most difficult times in all our lives.

Vermont needs local, reliable community members capable of providing and coordinating elder care in the home, outside of institutional settings. Many constituent families in and around Dummerston, Vermont have depended on Ms. Herbert to meet the needs of aging family members. Ms. Herbert's compassionate care has enabled aged and ill Vermonters to live and die with dignity. Losing Ms. Herbert and her services would be a great loss to the community of Dummerston and the State of Vermont. I ask that you consider this among the equities in this case.

The principle of families staying together is at the core of our immigration law and policy. My constituent Ms. Herbert should not be forced to choose between her lawfully wedded spouse and her country. The Administration has determined the law that threatens their family to be unconstitutional. I urge you, again, to consider exercising favorable discretion for a deserving and committed family by holding Ms. Herbert and Ms. Ueda's Petition and Application in abeyance pending a legislative repeal of DOMA or a final determination of Federal court litigation challenging DOMA's constitutionality.

Thank you for your consideration of this request. If you have any questions about Ms. Herbert and Ms. Ueda's case, please contact Ms. Kelley Goulette in my Vermont District Office at (802) 862-0697.

Sincerely

A handwritten signature in cursive script, reading "Bernard Sanders".

BERNARD SANDERS
UNITED STATES SENATOR

Enc.