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U.S. Citizenship
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Services

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FILE:

[REDACTED]
EAC 03 155 52824

Office: VERMONT SERVICE CENTER

Date: JAN 04 2006

IN RE:

Petitioner: [REDACTED]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a native and citizen of India 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 record reflects that the petitioner married United States citizen Amity Joy Pereira on February 2, 2001 in Englewood, New Jersey. On April 13, 2001, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The petitioner filed a Form I-485 on this same date. On November 30, 2001, the Form I-130 was withdrawn by the petitioner's spouse and the Form I-485 was denied. The petitioner was then placed in removal proceedings.

The instant Form I-360 petition was filed by the petitioner on April 19, 2003. The director denied the petition on March 15, 2005 finding that the petitioner failed to establish: 1) that he resided with his citizen spouse 2) that he has been battered by or subjected to extreme cruelty by his citizen spouse and 3) that he entered into the qualifying marriage in good faith.

On appeal, the petitioner states on the Form I-290B that the director's decision was in error and claims that he resided with his spouse, that he was subjected to extreme cruelty and that he entered his marriage in good faith.

In the brief submitted on appeal by counsel for the petitioner, counsel focuses his argument on the issue of the petitioner's residence with his spouse and attempts to provide an explanation for the discrepant information contained in the record regarding the petitioner's and his spouse's addresses. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel then argues that the director's request for evidence should have clearly identified the insufficiencies and discrepancies regarding the petitioner's evidence. The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. It is noted that in this instance, the director's May 26, 2004 request for evidence listed the specific evidence to be submitted to establish a claim of battery and/or extreme cruelty, that he entered into the marriage in good faith and that he resided with his spouse.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, or to specifically identify the insufficiencies or discrepancies contained in the record, it is not clear that counsel's request for remand is the appropriate remedy. As the denial notice put the petitioner on notice of the

deficiencies in the record the petitioner could have supplemented the record on appeal. It would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Regardless, the regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel fails to specifically address the issues of whether the petitioner entered into the marriage in good faith and whether he was battered or subjected to extreme cruelty. Although counsel challenges the weight the director accorded the petitioner's evidence, we note that pursuant to the regulation at 8 C.F.R. § 204.2(2)(i), the determination of what evidence is credible and the weight to be given that evidence "shall be *within the sole discretion* of the Service." [Emphasis added.] The general statements made by the petitioner regarding his eligibility and counsel's general statements regarding the weight afforded the petitioner's evidence is not sufficient to meet the regulations.

Inasmuch as counsel has failed to specifically identify an erroneous conclusion of law or a statement of fact and failed to fully address the grounds for denial, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.¹

¹ Although not addressed by the director, we note that the petitioner may be subject to Section 204(c) of the Act which provides that no petition shall be approved if the alien has previously sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws. In the event that the petitioner files a motion to reopen this decision or files another petition before the Service, this issue should be addressed at that time.