Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: [illegible] 2005
EAC 03 115 53724

IN RE: Petitioner:
Beneficiary: [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:

[redacted]

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.

Marii Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of Nepal 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 director denied the petition, finding that the petitioner failed to establish that he had entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits additional evidence and a brief.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

> 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 . . . 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; [and]
>
> * * *
>
> (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

> *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

The record reflects that the petitioner entered the United States as a B-2 nonimmigrant visitor on July 8, 1996. The petitioner wed United States citizen Paula Pouchie on April 27, 1999 in Baltimore County, Maryland. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on August 28, 2000. On September 25, 2001, action was terminated on the Form I-130 petition due to abandonment. On February 27, 2003, the petitioner filed a Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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. The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi). The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that he has resided with his citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he had entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by his citizen spouse, the director asked him to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, and that he married his spouse in good faith.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence.

On appeal, counsel for the petitioner submits a brief and additional evidence.

The director determined and the AAO concurs that the petitioner failed to establish that he had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married his husband in good faith. The evidence on the record consists of the following:

- The petitioner's declaration.
- The petitioner's addendum to his declaration.

- An undated letter from [redacted] restaurant owner and manager that states that the petitioner and his wife were a lovely and happy couple.

- The petitioner's marriage certificate.

- The statement of [redacted] stating that she and the petitioner remained friends throughout his marriage.

- The statement of a friend named [redacted] stating that she attended the petitioner's wedding ceremony and helped the petitioner and his wife move into their apartment.

- An Internal Revenue Service printout indicating that the petitioner and his wife filed a 1999 joint federal tax return in 2003, long after they had separated.

- A psychosocial report dated November 18, 2002 and a supplemental report dated February 27, 2004 based upon two sessions with the petitioner on August 14 and August 29, 2002.

- A joint bank statement showing a zero balance on December 24, 2001.

- A letter from Allstate indicating that the petitioner was insured and his wife was listed as an unlicensed member of his household.

The petitioner failed to submit insurance policies in which his wife is named as the beneficiary. Instead, he submitted evidence that he was insured. The author of the psychosocial reports stated that the petitioner met and married in good faith. The sole basis for his knowledge of the marriage was information relayed by the petitioner in two therapy sessions. The petitioner failed to submit bank statements indicating that he and his wife had *active* shared accounts. He provided scant evidence of his wedding ceremony and courtship. He provided no evidence of joint ownership of property. No children were born of the marriage. The affidavits of friends provided little specific information about the petitioner's wedding and marital relationship. The evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith.

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.