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**U.S. Citizenship
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Services**

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FILE:

[REDACTED]
EAC 04 002 53510

Office: VERMONT SERVICE CENTER

Date: JUN 10 2005

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:

SELF-REPRESENTED

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 Acting Director (Director), Vermont Service Center, and is now before the Administrative Appeals Office 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 entered into the marriage with his citizen spouse in good faith.

The petitioner submits a timely appeal.

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)(2)(ix) states:

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. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

According to the evidence in the record, the petitioner wed United States citizen [REDACTED] California on May 1, 2002. On October 1, 2003, 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, his U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he entered into the marriage with his citizen spouse in good faith, he was requested on July 29, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish this claim.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the request for additional evidence. The discussion will not be repeated here.

On appeal, the petitioner claims that the director “ignored” the affidavits¹ contained in the record and states that the director’s denial is “full of discrimination, unfavorable and equal right between man and woman is disrespected.”

We note that contrary to the petitioner’s claim that the director “ignored” the affidavits in the record, the director’s decision indicated that the affidavits were “vague and do not contain sufficient detail to determine [the petitioner’s] intentions upon entering the marriage.” The fact that the petitioner does not agree with the director’s determination, does not mean that the director “ignored” the petitioner’s evidence.

Further, we note that the petitioner fails to point to any specific language or portion of the director’s decision or provide any proof to support his claim that the director’s decision is discriminatory and promotes the unequal treatment of men versus women.

¹ Although the director refers to these letters as “affidavits,” we find no evidence to consider these letters as sworn statements, made under oath and witnessed by a person so authorized, such as a notary public

The petitioner also requests oral argument. However, the regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, the AAO has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner has identified no unique factors or issues of law to be resolved. In fact, the petitioner set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

In support of the appeal, the petitioner submits a written statement, two additional affidavits, and copies of documents previously submitted into the record.

In review, the evidence is insufficient to establish that the petitioner entered into the marriage with his spouse in good faith. The sole evidence related to the petitioner's claim of a good faith marriage consists of his statement and letters from relatives and acquaintances.

In the statement submitted on appeal, although the petitioner claims that he and his spouse "did not have enough money to buy a new property as home, automobile," and therefore does not have evidence of "joint ownership," the petitioner provides no explanation for the lack of proof of bills such as utilities. In fact, although the petitioner claims that in the apartment he shared with his wife that they had "basic requirements like gas, power and telephone," he can provide no evidence that he and his spouse were jointly responsible for such necessities. The petitioner provides no explanation for the absence of such documentation.

The two letters submitted by acquaintances of the petitioner at the time of the initial filing do not document the petitioner's courtship with his spouse or provide any details of their married life. Rather, the letters appear to be written more as documentation of the abuse claimed by the petitioner.

In response to the request for evidence the petitioner submitted one photograph of himself and his spouse. Although the photograph is evidence that the petitioner and his spouse were together at a particular place and time, it does not sufficiently document that the petitioner entered the marriage in good faith.

The petitioner also submitted several additional letters from relatives and acquaintances. The letters state things such as "we know that, this couple [married] in good faith," that "we came to learn that [the petitioner] had arrived in Chico about a month earlier and had married his fiancée," and that "we had several social occasions where I witnessed them to be sharing profound love for each other." The letters submitted on appeal contain the same generalities as the letters previously submitted.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The deficiencies contained in the letters, combined with the petitioner's failure to submit documentation to establish joint responsibilities and liabilities in the marriage, do not allow the petitioner to meet the burden in this case. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.