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2021

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
(Via Video Conference)**

W.P.A. No.1816 of 2021

**Mrs Hu Mia and another
Versus
The Union of India and others**

Mr. Tarun Kumar Das.
...for the petitioners.

Mr. Phiroze Edulji,
Mr. Hemonta C. Mitter.
...for the Union of India.

The present writ petition has been filed primarily praying for a direction on the respondent-authorities to grant a visa to the first petitioner. Learned counsel for the petitioners submits that the petitioners intend to marry each other and applied for registration of their marriage. However, such application could not reach fruition since the visa granted initially to the petitioner no.1 expired in November, 2020.

It is submitted that special consideration may be given by the authorities in view of the peculiar circumstances of the case, since the petitioners' intention is bona fide.

Learned counsel appearing for the respondent-authorities submits that no application has yet been made by the petitioners under the appropriate law in the context, which is the Foreign Marriage Act, 1969, which governs nuptial bonds between foreign nationals and Indians. In the event there is no valid marriage under the said Act between the petitioners, it is submitted that the first petitioner will not be entitled to claim visa as the spouse of an Indian national. Even otherwise, the petitioner no.1 will not be entitled to visa, since a policy-decision of the Government of India is in force, to refuse grant of visa to Chinese Nationals in view of the current strained relation between the countries.

It is seen from the circumstances of the case, that although there is scope of empathy with the petitioners in view of the peculiar circumstances of the case, since the petitioners have not contracted marriage under the appropriate law, there is no scope for grant of visa to the first petitioner on the ground of her marriage with an Indian National. In the absence of such marriage, the petitioner no.1 has to apply independently for an X-1 visa, which are not being granted, as indicated above, at the present juncture.

As such, it is further clarified by learned counsel for the respondent-authorities that an X-1 visa cannot be granted to the first petitioner since the

said petitioner is unable to produce her valid marriage certificate with an Indian citizen, that is, the petitioner no.2 in the present case.

In the circumstances, there is no scope for interference in the present writ petition.

WPA No. 1816 of 2021 is, thus, disposed of, with liberty to the petitioners to approach the respondent-authorities for issuance of visa to the petitioner no.1 upon the petitioners having contracted a valid marriage under the Foreign Marriage Act, 1969 as well as for the first petitioner to apply for a visa in normal course as and when the prevalent restrictions are lifted.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)