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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[redacted]

OCT1603_01B9204

FILE: [redacted] Office: Vermont Service Center Date: OCT 16 2003

IN RE: Petitioner: [redacted]
Beneficiary:

APPLICATION: 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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

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 on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Tanzania 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 determined that the petitioner failed to establish that he: (1) is the spouse of a citizen or lawful permanent resident of the United States; and (2) is eligible for immigrant classification under either section 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i) or section 203(a)(2)(A), 8 U.S.C. § 1153(a)(2)(A), based on that relationship. The director based this decision on various documents purporting to establish that the petitioner was divorced from his first wife. Several of those documents were determined to be fraudulent. The director further found that the petitioner had not established that his marriage to his U.S. citizen wife was of a bona fide nature. The director, therefore, denied the petition.

On appeal, counsel states that the petitioner did not engage in fraud, as he was unaware of how the documents were obtained and could not be held accountable for the government corruption that resulted in the fraudulent documents he presented to the Service (now Citizenship and Immigration Services (CIS)). In addition, he asserts that the petitioner's divorce was valid according to Muslim law and was therefore in effect in 1997. Counsel further states that the petitioner's marriage was bona fide and entered into in good faith.

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

> (i) 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 in the United States 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;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner first entered the United States as a visitor on May 14, 1997. The petitioner married his United States (U.S.) citizen spouse on May 1, 1998 in Las Vegas, Nevada. On May 26, 2000, 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 Service initially approved that petition on December 5, 2000. On January 11, 2002 the Service issued a Notice of Intent to Revoke (NIR) based on a finding by the U.S. Embassy in Dar es Salaam, Tanzania that the divorce documents were of questionable reliability and therefore, the petitioner had not established that he was unmarried and free to marry his U.S. citizen wife.

The record contains the following documents related to the termination of the petitioner's marriage to his first wife:

1) A statement by the petitioner, apparently addressed to the National Muslim Council of Tanzania, noting the name of his first wife, their date of marriage and the fact that they have two children, and stating that he decided to "divorce her with three divorces - she is no longer my wife." The translation of the document has no date on it, but what appears to be a copy of the original has the date September 25, 1997 written next to the petitioner's signature.

2) Divorce Decree #698, cause number 4/97, registered with the Kisutu Resident Magistrate Court, Dar es Salaam, on November 4, 1997, listing the date of the decree as September 25, 1997.

3) A memo from the National Muslim Council of Tanzania to the Kariakoo Primary Court, Ref. No. BKT/DAR/058/VOL.

 [redacted]

VII/98/880, dated November 26, 1998 stating that the plaintiff (the petitioner's first wife) has provided proof that her husband had divorced her three times, that she had been divorced since September 9, 1997, and therefore the plaintiff should be given a copy of the divorce so as to be free.

4) A Certificate of Matrimonial Status from the Magistrate in Charge, Kariakoo Primary Court, Ref. No. Civil Case/26/97, dated January 30, 1999 certifying that the divorce certificate issued on November 23, 1998 is valid and Islamic and that the marriage (between the petitioner and his first wife) was broken on September 9, 1997.

5) A United Republic of Tanzania Divorce Certificate dated February 16, 1999 stating that the marriage between the petitioner and his first wife was broken. The certificate refers to a divorce certificate dated November 23, 1998 and also notes September 9, 1997 in parentheses after stating that the marriage was broken. It is noted that the record only contains a translation of this document. The translation contains no information on which court produced this particular certificate or any other reference or identifying information.

6) Divorce Decree #744, cause number 26/97 registered with the Kariakoo Primary Court, Dar es Salaam on October 24, 2001, listing the date of the decree as September 25, 1997.

7) A letter to [redacted] counsel for the petitioner, from C.O. Kaisi, Registrar General of Marriage and Divorce, Office of the Administrator General, Dar es Salaam, dated November 13, 2001. The letter states that the petitioner was divorced from his first wife in a Muslim divorce in Tanzania in September 1997. It goes on to state that the divorce was endorsed by the Kariakoo Magistrate's Court in a Civil Cause No. 26 of 1997 by issuance of a Decree of Divorce dated September 25, 1997. The letter further states:

> It is very unfortunate that your client's divorce could not be traced easily on search as it was listed on Civil Divorces Index instead of that of Islamic Divorces. You should very well know that our offices are not modernized as all retreaval [sic] searches are conducted manually and not by computers. Hence, it was very easy to make mistakes of reading between the lines.

However, I am pleased to inform you that Mr. Wallis divorce was indeed officially registered under entry No. 744 of which copy is herewith attached for your ease of reference. Indeed Entry No. 698 of the Divorce Register truly lists the names of another couple whose Cause was that of No. 4 of 1997.

8) An April 3, 2002 letter to the U.S. Embassy, Dar es Salaam from S.S. Kaganda, Registrar, Court of Appeals of Tanzania in which it is stated that all civil registers at Kariakoo Primary Court had been inspected and case number 26/1997 appeared with the names of different parties. The letter noted that it was "clear that the documents presented to you are not genuine because they totally differ from the actual records existing in our Court."

9) A request to the District Court of Ilala for a Decree for Divorce dated July 17, 2002. The request is that the divorce be effective from September 25, 1997. The request was ordered, signed and sealed on July 17, 2002 by the Resident Magistrate.

10) An affidavit from the petitioner's first wife, dated July 23, 2002 in which she states that she and the petitioner were divorced in accordance with Islamic laws on September 25, 1997.

The April 3, 2002 letter from the Court of Appeals (#8) clearly states that the divorce was not registered as claimed at Kariakoo Primary Court under cause number 26/1997. That would mean that Divorce Decree No. 744 (#6), while possibly a validly issued document, was based on false information regarding the Karaikoo Court registration, and that the Certificate of Matrimonial Status (#4) was also of questionable validity as it too refers to Kariakoo Primary Court, Ref. No. Civil Case/26/97. The earlier letter from the Registrar General of Marriage and Divorce, Office of the Administrator General (#7) dated November 13, 2001 stated that entry No. 698 of the Divorce Register lists the names of another couple. These letters invalidate both divorce decrees submitted to the record prior to July 2002.

The record also contains the following information regarding the petitioner's divorce status:

1) A March 8, 2000 letter from Charles Mwalimu, Senior Legal Specialist, Library of Congress, to the petitioner, in which he states that he is enclosing a copy of the text of pertinent sections from the Law of Marriage Act, No. 5, 1971 and a copy of the text of the

Marriage, Divorce and Succession (Non-Christian Asiatic) Act of 1923.[1]

2) A letter from [redacted] to [redacted] Assistant District Counsel, dated August 16, 2001. This letter discusses the Marriage, Divorce and Succession Act of 1923 and verifies that under Islamic law a husband may divorce his wife through three divorces, or Talaqs, as the petitioner had done. He also states that "The pertinent sections of the Law of Marriage Act, 1971, as amended (*Supp. To the Rep. Of Tanzania Govt. Gazette*) and the Law of 1923 as amended must be read together for a clear understanding of the law in this area." The letter goes on to discuss various documents submitted by the petitioner, referring to numbers by which they were apparently identified in counsel's submission to [redacted] The documents discussed are not attached to the letter or otherwise numbered in the record, therefore, it is not possible to truly determine which documents [redacted] efers to in his analysis of the validity of the petitioner's divorce.

3) A letter to the petitioner's attorney from [redacted] an attorney and expert on Tanzanian family law, dated August 7, 2002. In her letter [redacted] discusses Tanzanian divorce law and [redacted] presented to her by petitioner's counsel. It appears from the letter that she was shown the documents relating to the Muslim divorce and the July 17, 2002 civil document from the Ilala District Court. It was her opinion that based on the documents she had, there was nothing unusual and everything seemed to be in order.

Her letter also states, in pertinent part:

> The letter from the National Muslim Council of Tanzania is not a divorce certificate but a Certificate which spouses need to obtain in order to petition for divorce in court.
>
> . . .
>
> With particular reference to Islamic Law, the three talaks once pronounced by a husband are sufficient to confirm a divorce save for the requirements of the Law of Marriage Act, 1971 which supercedes Islamic and Customary Laws on matters provided for under the Law of Marriage Act, 1971.... It states:

[1] Though the text of the Marriage, Divorce and Succession Act of 1923 is included in the record, there is no copy of the Law of Marriage Act of 1971.

 [redacted]

> "Notwithstanding the provisions of this Act, the rules of Customary Law and Islamic Law shall not apply in regard to any matter provided for in the Law of Marriage Act, 1971."
>
> . . .
>
> It is clear therefore that by virtue of that caveat on Islamic law, the three talaks did not constitute a divorce in law unless and until the same had been presented in a court of competent jurisdiction and a divorce decree actually issued.

Contrary to counsel's assertion, it is clearly indicated in [redacted]s letter that an Islamic divorce is not final until presented in court. Her finding that the petitioner's divorce was not irregular is apparently based on the last divorce certificate, issued in July 2002. Unlike the other certificates submitted, the validity of that certificate has not been questioned. However, though the July 2002 divorce certificate indicates that the divorce is effective as of September 25, 1997, it was not issued until four years after the petitioner married his U.S. citizen spouse.

Though it appears that procedures for an Islamic divorce were followed, the divorce was never properly registered with a court of competent jurisdiction until July 17, 2002. Thus, the divorce cannot be considered final until July 17, 2002. A divorce that is not finalized prior to a second marriage is not valid for immigration purposes and the visa petition based on that marriage must be denied. *See Matter of Valerio*, 15 I&N Dec. 659 (BIA 1976). At the time of his marriage in May 1998 the petitioner was not divorced from his first wife according to the laws of Tanzania. He was, therefore, not legally in a position to marry his second wife in the U.S.

Accordingly, the petitioner is ineligible for the benefit sought, pursuant to 8 C.F.R. § 204.2(c)(1)(ii). He has failed to overcome the director's findings, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(A) and (B).

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.