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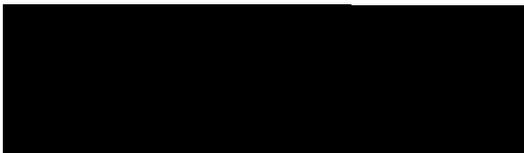
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

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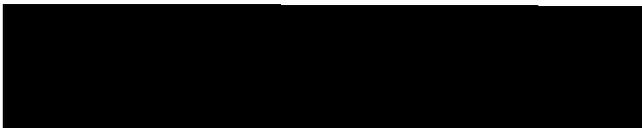
IN RE:

Petitioner:



PETITION: Petition for 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, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that she had a qualifying relationship with her husband and was eligible for immediate relative classification based on such a relationship.

On appeal, counsel submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful

permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner[.]

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ghana who entered the United States on August 2, 2002 as a nonimmigrant visitor (B-2). The petitioner was previously married in Ghana in 1999 and in these proceedings, the petitioner claims that she was divorced from her first husband on November 30, 2002. On January 17, 2003, the petitioner married [REDACTED] in Georgia. The petitioner filed this Form I-360 on May 11, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the legal termination of the petitioner's first marriage. The petitioner, through counsel, timely responded with additional evidence. On March 3, 2006, the director issued a Notice of Intent to Deny (NOID) the petition because the evidence did not establish the legal termination of the petitioner's first marriage and consequently, the record did not demonstrate that the petitioner had a qualifying relationship with her second husband and was eligible for immediate relative classification based on such a relationship. The petitioner, through counsel, timely responded with an additional document. On June 5, 2006, the director denied the petition on the grounds cited in the NOID.

On appeal, counsel claims that the director should have credited the documents attesting to the customary dissolution of the petitioner's prior marriage under principles of comity. We concur with the director's determinations. Counsel's claims and the evidence submitted on appeal fail to overcome the grounds for denial.

Qualifying Relationship

On the Form I-360, the petitioner stated that she had been married twice, but she initially submitted no evidence of the legal termination of her prior marriage. In response to the RFE, the petitioner submitted a copy of the "Joint Declaration" of the petitioner's father and her former father-in-law which states that "on the 30th day of November, 2002 the Ghanaian Native Customary Marriage was DISSOLVED at Accra after the necessary customary rites were performed" (capitalization in original). This document is dated May 6, 2005 and is captioned:

In the Superior Court of Judicature[.], In the High Court of Justice, Ghana[.], Accra – A.D. 2005[.] In the Matter of the Statutory Declaration Act No. 389 of 1971 and In the Matter of Joint Declaration by [the petitioner's father and former father-in-law] jointly and severally testifying and confirming to the dissolution of Ghanaian Native Customary Marriage Between [their] Children [the petitioner and her first husband].

* Name withheld to protect individual's identity.

The document is signed by the declarants and notarized. The Joint Declaration was submitted with a copy of a letter from the Deputy Chief Registrar of the Judicial Service of Ghana, who affirms that the notary who signed the Joint Declaration is a recognized notary public in Ghana. However, the record contains no evidence that the signature of a notary public in Ghana constitutes official court recognition of a document such as the Joint Declaration.

In the NOID, the director informed the petitioner that the Joint Declaration was insufficient to establish the legal termination of her prior marriage because it was not a decree issued by a high, circuit or district court under the Matrimonial Causes Act of 1971 (Act 367), Section 41(2), which the Foreign Affairs Manual of the Department of State cites as proper documentation of the dissolution of a customary marriage.

In response to the NOID, the petitioner submitted a copy of a "Final Decree" issued by Felicity Amoah J., Judge of the High Court of Accra, Ghana; signed by the Chief Registrar and dated March 28, 2006. The decree states that the petitioner's customary marriage was customarily dissolved on November 20, 2002, although the Joint Declaration states that the dissolution took place on November 30, 2002. Neither counsel nor the petitioner explains this discrepancy in the alleged date of the customary divorce.

A divorce is generally recognized under U.S. immigration law when the divorce is shown to be valid under the laws of the jurisdiction granting the divorce. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983). In this case, counsel fails to show that the petitioner's customary divorce was valid in Ghana prior to her remarriage in the United States. Apart from the discrepancy regarding the date of the customary divorce, the record is devoid of any evidence that the date of the customary divorce, and not the date of the recognition of the customary divorce by the appropriate civil authority, would be the date that the petitioner's first marriage was legally terminated under Ghanaian law. The "Joint Declaration" and the "Final Decree" are dated two and a half and over four years after the alleged date of the customary divorce, respectively.

On appeal, counsel claims that we should recognize the "Final Decree" under principles of comity, yet provides no probative discussion or evidence to support her claim. Counsel submits a printout entitled "Legal History and Notable Features of Ghana Law" from <http://www.ghanaweb.com>, which states: "It is possible to terminate a customary law marriage by application to the court under the Matrimonial Causes Act[.]" Counsel claims that the use of the word "possible" means that there are other methods of terminating a customary marriage. Counsel provides no evidence to support her attenuated interpretation. Counsel further claims that "[g]etting a court order under the Matrimonial Causes Act is relatively new. Generations prior to the enactment of the Act were subject to the old customary law." Counsel submits no evidence to support her claim and we take administrative notice of the fact that the Matrimonial Causes Act was enacted in 1971, eighteen years before the alleged date of the customary dissolution of the petitioner's first marriage. On appeal, counsel also submits a printout from <http://www.tk-designs.com> entitled "Ghanaian Traditional Marriage Customs," which provides no relevant, probative information.

The evidence does not establish that the petitioner's first marriage was legally terminated prior to her remarriage, on which this petition is based. Consequently, the petitioner has not demonstrated that she has a qualifying relationship with her second husband pursuant to section 204(a)(1)(A)(iii)(II)(aa) of the Act.

The record also fails to establish that the petitioner was eligible for immediate relative classification based on her relationship with her second husband. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. The petitioner has not established that she has a qualifying relationship with her second husband. She consequently has also not demonstrated her eligibility for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The petitioner has failed to establish that, at the time of filing, she had a qualifying relationship with her second husband and was eligible for immediate relative classification based on such a relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.