

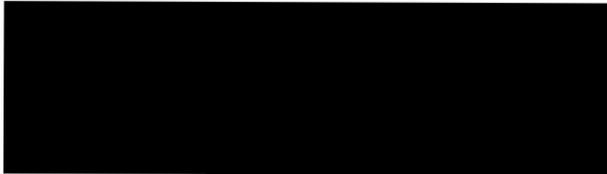


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

139



FILE:

EAC 07 169 50456

Office: VERMONT SERVICE CENTER

Date: AUG 29 2008

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Abused 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 immigrant classification under 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 finding that the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen and that he is eligible for immigrant classification based upon that relationship.

The petitioner, through counsel, submits a timely appeal with 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, 8 U.S.C. § 1154(a)(1)(J) 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 explicated 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 file by a spouse must 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 Nigeria who entered the United States on October 20, 2001 as a nonimmigrant visitor. On April 5, 2002, the petitioner married R-J-¹, a U.S. citizen, in Maryland. The petitioner filed this Form I-360 on May 21, 2007. On December 20, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, documentation to establish the termination of the petitioner's prior marriage to A-O-² in Nigeria. The petitioner responded to the director's RFE on March 10, 2008. The director denied the petition on May 7, 2008, finding that the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen and that he was eligible for immigrant classification based upon that relationship.

On appeal, counsel for the petitioner states that the documents previously submitted by the petitioner in this proceeding related to the termination of the petitioner's prior marriage "were not correct." Counsel submits two new documents and asserts that these new documents establish that the petitioner's marriage to A-O- was terminated prior to his marriage to R-J-. As will be discussed, we concur with the determination of the director. The petitioner has failed to overcome this determination on appeal.

At the time of filing, the petitioner submitted a copy of a marriage certificate from the Oloruntimilehin Mission of God (OMOG) which indicates that a "Holy Marriage Solemnization" took place between the petitioner and A-O- on September 23, 1995 in Lagos, Nigeria. As evidence of the legal termination of this marriage, the petitioner submitted a document from the Customary Court of Lagos State of Nigeria (customary decree), which indicates that the petitioner's marriage to A-O- was ordered dissolved on September 21, 2001.

In his RFE the director noted that the petitioner's marriage to A-O- was not a marriage "under native law and custom," but was rather a "religious marriage, performed in accordance with biblical doctrine." Additionally, the director noted that the customary decree was not properly signed by the president or any other member of the court. The director then notified the petitioner that according to the Department of State Foreign Affairs Manual (FAM), only "high courts have jurisdiction over civil divorces [and that the] proper documentation for the dissolution of a civil marriage is a 'Decree Absolute' issue by the high court granting the divorce."³

In response to the director's RFE, the petitioner did not dispute the director's finding that the petitioner's marriage to A-O- was a civil marriage, not a customary marriage. Instead, the petitioner

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

³ Department of State Reciprocity Schedule, Nigeria accessed at http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3640.html?css=print (August 25, 2008).

submitted two documents which, as indicated by the FAM, pertain to civil divorces in Nigeria; a “Decree Nisi” and a “Certificate of Decree Nisi Having Become Absolute (Decree Nisi Absolute).” The Decree Nisi, dated October 29, 2007, supports the director’s finding that the petitioner’s marriage to A-O- was contracted under the “Marriage Act,” and, therefore, concludes that the customary decree was “not relevant to the [petitioner’s] marriage.” The Decree Nisi Absolute is dated January 29, 2008 and states that the petitioner’s Decree Nisi became absolute on that date.

In his decision, the director noted that the Decree Nisi and the Decree Nisi Absolute submitted by the petitioner were merely “steps in the divorce process” and did not demonstrate a final divorce in accordance with Nigerian law. Therefore, the director determined that the petitioner failed to establish that he terminated his marriage to A-O- prior to his marriage to R-J-.

On appeal, counsel initially argues that it is “undisputed” that the customary decree is evidence that the petitioner was divorced from his first wife by the Customary Court and submits a letter from S.O. Lawal (LIT/176/08) from the Lagos State Judiciary, who states, in part, that the “decree absolute is in order with the ruling of the lower court....” We are not persuaded by counsel’s assertion or S.O. Lawal’s statement regarding the decree from the lower Customary Court. Contrary to counsel’s statement that the petitioner’s customary decree is undisputed evidence of a divorce, it was first disputed by the director in his RFE, when he noted the fact that the petitioner’s marriage was a religious marriage, not a customary marriage. Counsel did not dispute the director’s finding regarding the petitioner’s religious marriage before the director and fails to present any such argument on appeal. Although S.O. Lawal states that his letter supersedes an earlier letter, the record does not contain the earlier letter. We further note that while S.O. Lawal signs his letter “for” the Chief Registrar of the Lagos State Judiciary, the letter contains no reference to S.O. Lawal’s position, expertise, or other information to establish that he is a competent authority on Nigerian divorce law.

While counsel also submits a new Decree Nisi and a new Decree Nisi Absolute on appeal which both now indicate that the petitioner’s marriage to A-O- was terminated on September 21, 2001, rather than January 29, 2008, counsel provides no explanation regarding how the documents previously submitted were deemed “not correct” and why the newly submitted documents are deemed to be accurate. Although the new Decree Nisi indicates that the matter “was heard on this day 29th of October 2007,” the decree is actually dated January 29, 2008, the same date as the Decree Nisi Absolute. Further, the two new documents are purported to have been issued on the exact same date as the first Decree Nisi Absolute, yet contain a contradictory finding that the petitioner’s divorce took place in 2001 rather than 2008. Moreover, contrary to the finding in the first Decree Nisi that the customary decree was “not relevant” to petitioner’s marriage, the new Decree Nisi states that the court was “satisfied of the previous” customary decree. The self-serving and inconsistent findings contained in the new documents cast doubt on the validity of the documents submitted on appeal and diminish their evidentiary value. Citizenship and Immigration Services (CIS) is entitled to question the authenticity of any foreign document of record that is relied upon to establish a familial relationship. *See Matter of Richard*, 18 I&N Dec. 208 (BIA 1982). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile

such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, even if the petitioner is able to sufficiently overcome the discrepancies noted, which he has not, he has failed to submit the necessary documentation, namely a Decree Absolute, to establish that his marriage to A-O- was terminated in accordance with the laws of Nigeria prior to his marriage to R-J-. Despite the director's specific indication in both the RFE and final decision that the Decree Absolute is the evidence required to demonstrate the dissolution of a civil marriage in Nigeria, the petitioner has failed to submit this document. On this basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14). In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). Based upon the documents contained in the record, the petitioner has failed to establish that his marriage to A-O- was terminated before April 5, 2002, when he married R-J- and thus that his marriage to R-J- was valid.

Accordingly, the petitioner has failed to establish that he had a qualifying relationship as the spouse of a United States citizen and that he was eligible for immigrant classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa), (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (cc).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.