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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

MAY 16 2001

File:

Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:   
Beneficiary:

Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER:

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Thailand, as the fiance(e) of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K).

The director denied the petition after determining that the petitioner was not legally able to conclude a valid marriage with the beneficiary as required by section 214(d) of the Act.

On appeal, counsel briefly states the reasons for the appeal on the Form I-290B. Counsel also states that he will send a brief and/or evidence to the Administrative Appeals Office (AAO) within 30 days. Counsel made this statement on April 12, 1997 and to date, no additional evidence has been received into the record. Therefore, the record is considered complete.

Counsel also requests oral argument pursuant to 8 C.F.R. 103.3(b). The request for oral argument is denied because the issues of law in this case can be adequately addressed in writing.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiance(e)" as:

An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry....

Section 214(d) of the Act, 8 U.S.C. 1184(d) states in pertinent part that a fiancée petition:

shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bonafide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival...

The issue to be determined is whether the petitioner was legally able to conclude a valid marriage with the beneficiary at the time the petition was filed in November 1996. The director and counsel are disputing whether the petitioner's divorce decree, which was obtained at the Royal Thai Embassy in Washington, D.C., is valid for immigration purposes.

In denying the petition, the director cited to Matter of Hassan, 16 I&N Dec. 16 (BIA 1976), in which the Board held that a divorce obtained at a foreign consulate in New York was not a foreign divorce and, therefore, the principle of international comity was not involved. Accordingly, the Board held that the divorce was subject to the requirements of full faith and credit.

The director noted that the petitioner obtained his divorce from the Royal Thai Embassy in Washington, DC, when the petitioner and his former spouse were residing in Virginia. The director found that because the petitioner did not submit evidence that the District of Columbia recognized the petitioner's divorce as valid, the petitioner could not claim that his former wife's remarriage in Virginia was evidence that the District of Columbia recognized his divorce as valid.

On appeal, counsel calls attention to the fact that the petitioner received his divorce at the Royal Thai Embassy in Washington, DC, which is considered a foreign nation's territory, unlike a foreign consulate. Counsel also states that the remarriage of the petitioner's former spouse in the state of Virginia is evidence that Virginia, which is also the state in which the petitioner resides, gives full faith and credit to the petitioner's divorce, which occurred in the District of Columbia.

Counsel argues that "[i]f the divorce were performed in accordance with the laws of a foreign country, and in their territory, the United States, not the District of Columbia, would afford it full faith and credit."

Counsel's arguments are persuasive, in part, and unpersuasive, in part. Nevertheless, the evidence supports a finding that the petitioner was legally able to conclude a valid marriage with the beneficiary at the time the petition was filed.

This office agrees with counsel that the divorce decree that was executed at the Royal Thai Embassy can be distinguished from a divorce decree that is executed by a consulate, as an embassy is a foreign country's territory. The divorce decree that the petitioner received from the Thai embassy was akin to a foreign divorce and, therefore, must be judged on the principle of international comity. This office, however, disagrees with counsel that the United States gives full faith and credit to foreign divorces.

Federal law has been clear for many years that the Full Faith and Credit Clause does not apply to judgments of foreign countries. Thus, the Constitution of the United States does not require that states give full force and effect to divorce judgments of foreign nations. Magner v. Hobby, 215 F.2d 190 (2d Cir. 1954); Watson v. Blakely, 106 N.M. 687, 748 P.2d 984 (1987); Atassi v. Atassi, 117 N.C. App. 506, 451 S.E.2d 371 (1995); Sargent v. Sargent, 225 Pa. Super. 1, 307 A.2d 353 (1973). Courts will only recognize foreign judgments of divorce if the judgments are in accordance with the

principles of comity among nations.

In Will of Brown, 132 Misc. 2d 811, 505 N.Y.S.2d 334, 337 (Sur. Ct. 1986), the court described the concept of comity among nations:

It is well established in American law that, subject to possible obligations imposed by treaty between the United States and a foreign power, there is no constitutional obligation upon a state to recognize a judgment rendered by a court of another nation. But, with due regard to international duty and convenience, and the sense that respect is due to the judicial act of another sovereign, comity, that is, voluntary deference, is customarily accorded to the foreign decree to the extent that it is enforceable in the country which rendered it, provided that in the foreign tribunal there was a jurisdictional predicate in the procedural due process sense and that the public policy of the particular State is not thereby contravened. Should the decree fail to meet these criteria, it will not be recognized as such.

As long as a foreign judgment does not violate a party's basic due process rights and the judgment comports with public policy, a foreign country's judgment should be recognized by states pursuant to the doctrine of comity among nations. Accordingly, counsel is incorrect when he states that the United States would give full faith and credit to the petitioner's divorce decree. Only individual courts in the United States make determinations on whether to recognize a judgment of divorce of a foreign nation according to the principle of comity.

Counsel's argument regarding the importance of the petitioner's spouse's remarriage in the state of Virginia is, however, compelling.

The record reflects that at the time the petitioner and his former wife received their divorce, they were both domiciled in the state of Virginia. The director, however, required the petitioner to establish that the District of Columbia, in which the Royal Thai Embassy is located, recognized the validity of the petitioner's divorce. The director's instructions to the petitioner were, however, inapposite to Matter of Weaver, 16 I&N Dec. 730 (BIA 1979), in which the Board held that:

The validity of a divorce entered into while neither party to it is domiciled in the place where it was granted, but where both parties appeared for the divorce, should first be judged by the law of the jurisdiction where the parties to the divorce were domiciled at the time of the divorce. Since the place where the parties to the divorce were domiciled at the time of the divorce was the only place then having an interest in the proceedings, the parties should be able to rely on the law of that jurisdiction, even if they move to another

jurisdiction.<sup>1</sup>

The director erred in requiring the petitioner to establish that the District of Columbia recognized the validity of the petitioner's divorce decree. The director should have focused on whether the state of Virginia recognized the divorce decree, as both the petitioner and his former wife lived in the state of Virginia and, according to the divorce decree, both parties appeared at the Royal Thai Embassy for a divorce.<sup>2</sup>

This office agrees with counsel that the wife's remarriage in the state of Virginia 9 months after the divorce decree was issued by the Royal Thai Embassy is evidence that the state of Virginia recognized as valid the divorce between the petitioner and his former spouse. In Matter of Weaver, *supra*, the Board stated that "[h]ence, if Bahamian law [the place of the beneficiary's residence at the time of her divorce] recognizes the Dominican Republic divorce from her first husband, then we believe that divorce should be considered valid for immigration purposes."

The holding of that case is applicable to the present petition. It is apparent from the ability of the petitioner's former spouse to remarry in the state of Virginia that Virginia recognized as valid the divorce between her and the petitioner. Therefore, the Service should also recognize the petitioner's divorce decree as valid for this I-129F Petition.<sup>3</sup>

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<sup>1</sup>This case involved a beneficiary of I-130 petition who had been previously married. She and her former spouse had been living in the Bahamas at the time they obtained a divorce in the Dominican Republic. The beneficiary and the petitioner of her I-130 petition were living in Connecticut at the time the I-130 petition was denied. The district director had judged the validity of the Dominican divorce decree according to the laws of Connecticut.

<sup>2</sup>The petitioner's divorce decree states that the petitioner and his former wife "have now registered their divorce by mutual consent at this Registration Office on the June 1, 1992." This indicates that both parties were present in-person at the Royal Thai Embassy at the time of their divorce.

<sup>3</sup> Although not addressed in the context of immigration law, it is well established that if a party remarried in reliance on a foreign divorce, that party is estopped from claiming that the foreign divorce is invalid. Oakley v. Oakley, 30 Colo. App. 292, 493 P.2d 381 (1972); Lambert v. Lambert, 524 So. 2d 686 (Fla. DCA 1988); Scribner v. Scribner, 556 So. 2d 350 (Miss. 1990); Weinberg v. Todd Shipyards, 97 N.J. Super. 289, 235 A.2d 42 (App. Div. 1967); Capalbo v. Capalbo, 157 A.D.2d 696, 549 N.Y.S.2d 794 (1990); Lowenschuss v. Lowenschuss, 396 Pa. Super. 531, 579 A.2d 377 (1990).



This office finds that the petitioner's divorce decree that was issued by the Royal Thai Embassy is valid. The petitioner has, therefore, established that he was legally able to conclude a valid marriage at the time he filed the petition. As the director did not raise any other reasons for denying the petition, the instant petition should be approved.

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 met that burden.

**ORDER:** The appeal is sustained.