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FILE:

EAC 07 169 50456

Office: VERMONT SERVICE CENTER

Date: **NOV 11 2009**

IN RE: Petitioner:

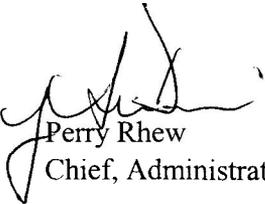
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed. The previous decision will be affirmed and the petition will be denied.

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 on May 7, 2008, determining that the petitioner had 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 AAO concurred with the director's decision. The AAO specifically observed that the director in a request for evidence (RFE) issued to the petitioner, had noted that the petitioner's marriage to his Nigerian wife was not a marriage "under native law and custom," but was rather a religious marriage, thus the document from the Customary Court of Lagos State of Nigeria (customary decree) terminating the marriage was not valid. In addition, the director noted that the customary decree was not signed by the president or any member of the customary court. The director 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' issued by the high court granting the divorce." The petitioner did not dispute the director's findings that the petitioner's marriage to his Nigerian wife was a civil marriage, not a customary marriage, but rather submitted a Decree Nisi, dated October 29, 2007 (which supports the director's finding that the petitioner's Nigerian marriage was contracted under the "Marriage Act) and a Decree Nisi Absolute dated January 29, 2008 which indicated that the petitioner's Decree Nisi became absolute on that date.

On appeal, the petitioner presented two new documents, a Decree Nisi and Decree Nisi Absolute which both indicated that the petitioner's marriage to his Nigerian wife was terminated on September 21, 2001, rather than January 29, 2008. Neither counsel nor the petitioner provided explanations regarding how or why the documents submitted for the director's review were deemed not correct and that the new submissions on appeal were accurate. The AAO found that 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." Moreover, the AAO determined that United States Citizenship and Immigration Services (USCIS) is entitled to question the authenticity of any foreign document of record that is relied upon to establish a familial relationship and cited *Matter of Richard*, 18 I&N Dec. 208 (BIA 1982) in support of its determination. The AAO also found that the petitioner's failure to provide a Decree Absolute, despite the director's specific indication that this is required evidence to demonstrate the dissolution of a civil marriage in Nigeria, was an additional reason why the petition could not be approved.

On motion, new counsel for the petitioner asserts that the petitioner's Nigerian marriage was a customary marriage and thus the customary divorce decree submitted with the initial petition was

sufficient to dissolve the petitioner's marriage on September 21, 2001, prior to his April 5, 2002 marriage to a United States citizen. Counsel submits the Articles of Incorporation for the Omnipotence Mission of God, previously called Oloruntimilehin Mission of God,<sup>1</sup> that were issued in July 2006 and a document issued by the Federal Ministry of Interior, Marriage Division, granting a license to the Omnipotence Mission of God to "purchase Marriage Certificate and Register" when available. The licensing document is dated December 14, 2007. Counsel asserts that based on this information, the petitioner's marriage could not have been a civil marriage because the church was not licensed when the petitioner was married and the marriage was solemnized in 1995.

Counsel also submits an affidavit dated September 15, 2008 from the petitioner's Nigerian wife's sister. The affiant states that her sister married the petitioner by performing traditional rites under native law and then the marriage was celebrated in the Oloruntimilehin Mission of God church. The affiant also states that her sister obtained a customary divorce from the petitioner in September 2001, remarried in 2002, and died as a result of childbirth in October 2003. Counsel submits a photocopy of a medical certificate in support of the affiant's claim regarding her sister's death. The affiant further states that she did not inform the petitioner of her sister's death and that the petitioner's family was not aware of her sister's death until on or about August 12, 2008 when she "ran into the elder brother of [the petitioner] who asked after [her] sister and [she] informed him that she died in the year 2003." Counsel also submits a statement from a Nigerian legal practitioner to support her assertions on motion.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner has not submitted any new facts. Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. The AAO finds that the Articles of Incorporation for the Omnipotence Mission of God, issued in July 2006, and the licensing document issued to the Omnipotence Mission of God to "purchase Marriage Certificate and Register" dated December 14, 2007 are not new documents. These documents were available when the director's decision was made on May 7, 2008. Moreover, these documents are relevant to the Omnipotence Mission of God, not the Oloruntimilehin Mission of God,

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<sup>1</sup> The record includes the petitioner's marriage certificate from the Oloruntimilehin Mission of God which indicates that a "Holy Marriage Solemnization" took place between the petitioner and his Nigerian wife on September 23, 1995.

the church where the petitioner was married. There is no explanation in the record whether a newly incorporated church would have to obtain new licensing to purchase marriage certificates. That is to say, the record on motion does not reveal whether the Oloruntimilehin Mission of God had marriage licensing authority or not.

Similarly, the AAO finds that the death certificate of the petitioner's Nigerian wife dated in 2003 is not new evidence. The AAO does not find the affidavit submitted by the petitioner's Nigerian wife's sister credible regarding the circumstances of the petitioner's knowledge of his Nigerian wife's death. The AAO again questions 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). As the record on motion does not include any "new" evidence sufficient to support a motion to reopen, the motion is denied.

The AAO observes that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. In this matter, the petitioner has not provided evidence sufficient to reopen the prior proceeding.

Neither has counsel submitted any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy based on the evidence of record at the time of the initial decision. Counsel fails to establish that the decision was an incorrect application of the law by pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record. The evidence fails to satisfy the requirements of a motion to reconsider.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decision of the AAO will be affirmed.

**ORDER:** The decision of the AAO is affirmed. The petition is denied.