identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D6

[redacted]

DATE: JUN 07 2012 OFFICE: VERMONT SERVICE CENTER [redacted]

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director (the director) denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a citizen of Sudan,[1] as the fiancé(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 on the basis of his determination that the petitioner failed to establish he was unmarried at the time he filed the petition. On appeal, the petitioner submits additional evidence.

Applicable Law

A "fiancé(e)" is defined at section 101(a)(15)(K) of the Act as someone who:

> subject to subsections (d) and (p) of section 214, [is] an alien who—
>
> (i) 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 admission[.]

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), states that a fiancé(e) petition shall only be approved after satisfactory evidence is submitted to establish that both parties are legally able to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival.

Pertinent Facts and Procedural History

The petitioner filed the instant petition on April 25, 2011. The director issued a subsequent request for additional evidence (RFE) and the petitioner filed a timely response. After considering the evidence of record, including the petitioner's response to his RFE, the director denied the petition on October 28, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

---

[1] The Republic of South Sudan achieved independence from Sudan on July 9, 2011, after this petition was filed. See U.S. Department of State, Bureau of African Affairs, *Background Note: South Sudan*. http://www.state.gov/r/pa/ei/bgn/171718.htm (accessed May 29, 2012). The statements made by the petitioner and his affiants indicate the beneficiary is from the region formerly of Sudan now known as the Republic of South Sudan.

Analysis

When asked at Part A, Question 9 to provide the names of his prior spouses, the petitioner answered "NONE." However, his naturalization certificate provides his marital status as "MARRIED." The director noted this discrepancy in the RFE, and requested that the petitioner submit proof of the legal termination of all prior marriages.

In his September 5, 2011 letter submitted in response to the RFE the petitioner asserted that he was no longer married to his previous wife. He claimed that that although his parents arranged a marriage and paid a dowry, he immigrated to the United States and never lived with his wife, and that she consequently remarried. He also explained that his former wife's family returned the dowry his parents had paid pursuant to the marriage agreement. The petitioner also submitted a letter from his brother, who claimed that the petitioner's marriage was arranged traditionally, and claimed that because his ex-wife remarried, the petitioner was "no longer responsible for her according to our tradition down here." The director found the assertions made by the petitioner and his brother insufficient, and stated that in Sudan divorce certificates must be obtained from the court granting the divorce.

In his November 22, 2011 letter submitted on appeal, the petitioner claims that when his brother and former brother-in-law attempted to obtain a divorce certificate on his behalf they were told it could not be issued unless they first presented a marriage certificate. However, the petitioner explains that because the marriage was arranged by his parents he has no marriage certificate to present and he consequently cannot obtain a divorce certificate. He also submits a letter from his former brother-in-law, who states that because the petitioner's first wife remarried, he is no longer "responsible for her." His brother-in-law also claims that marriage and divorce certificates are not issued for arranged marriages.

In his supplemental letter dated February 16, 2012, the petitioner claims that although he cannot obtain a divorce certificate in South Sudan, he was able to obtain one in Uganda, where his ex-wife now resides. He submits a document dated February 15, 2012 entitled "divorce deed," which was signed by the petitioner, his ex-wife, and a "witnessing advocate," and states the couple agreed to terminate their customary marriage. The petitioner also submits proof he traveled to Uganda to obtain the divorce deed.

The petitioner's submissions made on appeal do not establish that he is legally free to marry the beneficiary. 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). The petitioner claims that in South Sudan marriage certificates are not issued when a marriage is arranged traditionally by the parents; that divorce certificates are only issued when a marriage certificate was issued; and that divorce certificates are consequently unavailable when an arranged marriage ends in divorce. However, the petitioner submits no documentary evidence to support any of these claims regarding South Sudanese law, and the testimonial evidence he submits is not sufficient. The February 15, 2012 divorce decree does not establish that the petitioner is legally free to marry the beneficiary either, as

it was not issued by a court and instead appears comparable to a statement witnessed by a notary. He has failed to establish that this decree has any legal effect in either Uganda or South Sudan. *See Matter of Annang*, 14 I&N Dec. at 502. For all of these reasons, the petitioner has failed to establish he is legally free to marry the beneficiary as required by section 214(d)(1) of the Act.

Conclusion

The petitioner has failed to overcome the director's ground for denial and has not established that he is legally free to marry the beneficiary. Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(K)(i) of the Act and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). He has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.