



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF L-S-

DATE: JAN. 8, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act), § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. APPLICABLE LAW**

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 further 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 eligibility requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which provides, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

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(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

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

(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 . . . . 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 . . . .

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of Ghana, last entered the United States on March 10, 2006, as a B-2 nonimmigrant. She married A-O-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2012, in [REDACTED] Virginia. The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on November 10, 2014. The Director issued a request for evidence (RFE) of the Petitioner's qualifying relationship with A-O-. The Director noted that the Petitioner was previously married and did not submit evidence of termination of that marriage. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish that the Petitioner's previous marriage was legally terminated. Accordingly, the Director denied the Form I-360 based on a finding that the evidence did not establish that the Petitioner had a qualifying relationship with her U.S. citizen spouse and was eligible for immediate relative classification based on that relationship. The Petitioner filed a timely appeal and submits a brief in support of her appeal.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not demonstrate that the Director's decision to deny the Form I-360 was in error. Therefore, we will dismiss the appeal.

## III. QUALIFYING RELATIONSHIP AND CORRESPONDING ELIGIBILITY FOR IMMEDIATE RELATIVE CLASSIFICATION

The Petitioner has not established that she has a qualifying relationship with A-O-. The record of proceedings lacks sufficient evidence to show that the Petitioner's first marriage was legally terminated. The Petitioner married her first spouse, [REDACTED], in Ghana on [REDACTED] 2003,

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<sup>1</sup> Name withheld to protect the individual's identity.

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pursuant to Ghanaian customary law. She asserts that her marriage to [REDACTED] was dissolved in Ghana on [REDACTED] 2007. As evidence of the dissolution of that marriage, the Petitioner submitted, in response to the RFE, a document filed in the High Court of Justice, [REDACTED] Ghana, dated [REDACTED] 2008, entitled, "IN THE MATTER OF STATUTORY DECLARATION ACT. 389 OF 1971 - AND - IN THE MATTER OF JOINT DECLARATION BY [REDACTED] AND [REDACTED] TESTIFYING TO THE DISSOLUTION OF CUSTOMARY MARRIAGE BETWEEN [REDACTED] AND [THE PETITIONER]" (2008 Statutory Declaration). The 2008 Statutory Declaration lists the Petitioner's mother and [REDACTED] father as the declarants, but bears only one signature. It states that the Petitioner and [REDACTED] were married with the consent of their families, but were later unable to live together as spouses due to quarrels. The 2008 Statutory Declaration indicates that "some Principal Members of the family" witnessed the dissolution of the marriage, and that the Petitioner and [REDACTED] were each free to remarry.

The Director indicated in her decision that the 2008 Statutory Declaration the Petitioner submitted in response to the RFE was not sufficient to establish that the Petitioner's first marriage was legally terminated. The Director stated that, pursuant to guidelines from the U.S. Department of State, an affidavit or statutory declaration regarding a divorce under customary law in Ghana is not sufficient to establish dissolution of a marriage. The Director concluded that the Petitioner must submit a divorce decree to establish the dissolution of her marriage to [REDACTED] and that she was free to marry A-O-

In her brief on appeal, the Petitioner asserts that she submitted sufficient evidence to establish that she obtained a customary divorce from [REDACTED] in Ghana. She alleges that the sworn statements of her mother and [REDACTED] father, as presented in the 2008 Statutory Declaration, demonstrate that the marriage was dissolved with the agreement of the families and pursuant to customary law. The Petitioner argues that, as in her case, where a divorce is properly performed pursuant to "tribal formalities," a court decree is not necessary to establish that the divorce occurred. She relies on *Matter of DaBaase*, 16 I&N Dec. 720 (BIA 1979), *aff'd*, *Matter of DaBaase v. I.N.S.*, 627 F.2d 117 (8th Cir. 1980), and *Matter of Akinola*, 15 I&N Dec. 359 (BIA 1975), to support her assertion that "a non judicial divorce" in Ghana can be established through "sufficient proof to establish that the divorce under Ghanaian customary law was validly obtained." Furthermore, the Petitioner asserts that she also submits on appeal a decree from the High Court in Ghana to establish that she was divorced from [REDACTED]. Additionally, the Petitioner contends that the Director did not explain why the evidence the Petitioner previously submitted was not sufficient to establish her divorce.

The evidence in the record of proceedings is not sufficient to establish that the Petitioner divorced [REDACTED]. In addition to the 2008 Statutory Declaration, which the Petitioner submitted with her RFE response, the Petitioner submits on appeal a document filed in the Superior Court of Judicature in the High Court of Justice, [REDACTED] Ghana, dated [REDACTED] 2015, entitled, "IN THE MATTER OF STATUTORY DECLARATION ACT 389 OF 1971 AND IN THE MATTER OF A JOINT DECLARATION BY [REDACTED] AND [REDACTED] TESTIFYING TO THE DISSOLUTION OF CUSTOMARY MARRIAGE BETWEEN [REDACTED] AND [THE PETITIONER]" (2015 Statutory Declaration). The 2015 Statutory Declaration lists the Petitioner's

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father and [REDACTED] father as the declarants. It describes the customary wedding ceremony between the Petitioner and [REDACTED] and states that they separated in December 2005. The 2015 Statutory Declaration further states that the families of the Petitioner and [REDACTED] held a meeting on July 7, 2007, to dissolve the marriage pursuant to the laws of the tribe. It indicates that the Petitioner's father initiated the dissolution, that the families of the couple accepted it, and that the [REDACTED] tribe recognized the dissolution.

The Board of Immigration Appeals has held that "the desirable proper documentation" of a customary divorce in Ghana is a court decree, but that affidavits by the fathers of the spouses may be sufficient under Ghanaian law to establish the dissolution of a customary tribal marriage. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008), *modifying Matter of Kumah*, 19 I&N Dec. 290 (BIA 1985). The evidence must establish "(1) the tribe to which [the Petitioner] belongs, (2) the current customary divorce law of that tribe, and (3) the fact that the pertinent ceremonial procedures were followed." *Matter of Kodwo*, 24 I&N Dec. at 482 (quoting *Matter of DaBaase*, 16 I&N Dec. 39 (BIA 1976)). In addition, the Board stated that "[a]ffidavits should be specific and include the full names and birth dates of the parties; the date of the customary marriage; the date of, and grounds for, the dissolution of the marriage; and a description of the tribal formalities that were observed, including the names of the tribal leaders, the name of the tribe, the place, the type of divorce, and any other relevant information." *Id.* at 483.

The 2008 Statutory Declaration is not sufficient under the Board's holding in *Matter of Kodwo*. It does not include the name of the Petitioner's tribe, refer to the current customary divorce law of that tribe, indicate whether pertinent ceremonial procedures were followed, or provide the birth dates of the parties and a description of the tribal formalities that were observed, including the names of tribal leaders or the name of the tribe. The 2015 Statutory Declaration does not specifically name the Petitioner's tribe or provide the names of tribal leaders or the type of divorce, although it does refer to the current customary divorce law of the [REDACTED] tribe, indicates that pertinent ceremonial procedures were followed, and provides the full names and birth dates of the parties, the date of the customary marriage, the date of, and grounds for, the dissolution of the marriage, and a description of certain tribal formalities that were observed, including the name of the tribe and the place of divorce. In addition, the 2015 Statutory Declaration was executed more than eight years after the Petitioner's marriage had allegedly been dissolved, and the Petitioner does not explain why she delayed in obtaining the 2015 Statutory Declaration.

The Ghana Reciprocity Schedule maintained by the U.S. Department of State, Bureau of Consular Affairs, provides the following information regarding divorce certificates in Ghana:

Certificates for the dissolution of a civil marriage may be obtained from the court that granted the divorce. Proper documentation of the dissolution of a customary marriage is a decree, issued by a high court, circuit court or district court under the Matrimonial Causes Act of 1971 (Act 367), Section 41(2), stating that the marriage in question was dissolved in accordance with customary law. Affidavits or "statutory declarations" attesting to a divorce under customary law, even when duly sworn, do

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not constitute proper documentation of the dissolution of a Ghanaian customary marriage.

The Petitioner has submitted only statutory declarations to support her claim that she divorced [REDACTED] in Ghana. Although she asserts that the 2015 Statutory Declaration is a decree issued by a court, the document itself does not support her claim. Pursuant to the guidelines of the U.S. Department of State, statutory declarations are not sufficient to establish a divorce in Ghana.

The Petitioner in this case has presented affidavits from her parents and [REDACTED] father, in the form of the 2008 and 2015 Statutory Declarations, stating that she and [REDACTED] were divorced pursuant to their tribal customs. As noted above, the 2008 and 2015 Statutory Declarations do not entirely comport with the requirements for such declarations specified in *Matter of Kodwo*, 24 I&N Dec. at 482. In addition, while the Petitioner claims in her brief on appeal to have submitted on appeal a decree from the High Court in Ghana to establish that she was divorced from [REDACTED] this decree is, in fact, the 2008 and 2015 Statutory Declarations which have merely been notarized by the First Deputy Judicial Secretary of the Judicial Service of Ghana. Therefore, the Petitioner has not demonstrated that her first marriage legally terminated before she married A-O-, and, accordingly, she does not have a qualifying relationship with a U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

#### IV. CONCLUSION

The preponderance of the evidence does not demonstrate that the Petitioner has a qualifying relationship with her U.S. citizen spouse. The Petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of L-S-*, ID# 15412 (AAO Jan. 8, 2016)