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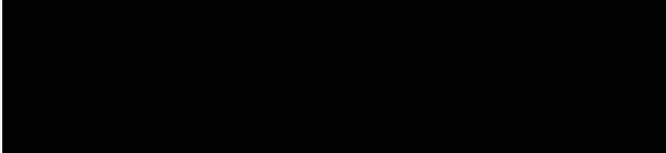
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
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FILE: [REDACTED]  
MSC 07 173 24843

Office: VERMONT SERVICE CENTER

Date: JUN 08 2009

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

John F. Grissom,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

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

Section 101(a)(15)(K) of the Act defines "fiancé(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 fiancé(e) 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 bona fide 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 . . . [emphasis added].

It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on March 22, 2007.

On July 5, 2007, the Director requested the petitioner submit the following documentation: a completed Biographic Information Sheet (Form G-325A) for the petitioner and for the beneficiary; two passport style photographs of the petitioner; and proof of the legal termination of the previous marriage of the beneficiary to [REDACTED]. In response to the director's request, the petitioner submitted: the required photographs, the completed Form G-325As and a "statutory declaration," dated October 27, 2006, from the father of the beneficiary and the father of the beneficiary's spouse, [REDACTED], which states that the customary marriage between their son and daughter was dissolved on October 24, 2006 in Accra, Ghana.

On December 7, 2007 the director denied the petition finding that the statutory declaration submitted by the petitioner did not meet the burden of proof in establishing that the beneficiary was legally free to marry at the time the petition was filed. *Director's Decision*, dated December 7, 2007. The director cited the United States Foreign Affairs Manual (FAM), which states that divorce decrees are available in Ghana. The FAM states that 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. The director states further that affidavits or "statutory declarations" attesting to a divorce under customary law, even when duly sworn, do not constitute proper documentation of the dissolution of a Ghanaian customary marriage. *Id.*

On appeal, the petitioner submits a divorce document from the Circuit Court in Tema, Ghana. The document is entitled, "Confirmation of Dissolution of Customary Marriage," stamped by [REDACTED] and signed by the Circuit Court Registrar. The document states that after reading the affidavit from [REDACTED] father filed with the court on December 28, 2007 and after hearing [REDACTED] father in person, the court confirms that the marriage between [REDACTED] and [REDACTED] was customarily dissolved on October 24, 2006 in Accra. The Court states that the order is made under Section 41(2) of the Matrimonial Causes Act 367 of 1971. *Confirmation of Dissolution of Customary Marriage*, dated December 28, 2007.

On April 20, 2009, the AAO requested additional documentation to show that the petitioner and beneficiary met during the two year time period prior to filing the Form I-129F, March 22, 2005 to March 22, 2007. In response to this request, the petitioner submitted copies of pages from her passport showing entry and exit stamps for travel to Ghana during the following dates: May 23, 2004 to June 29, 2004, July 16, 2006 to August 15, 2006, and February 13, 2007 to March 8, 2007. In addition to the copies of pages from her passport, the petitioner submits photographs of herself with the beneficiary. She states that one photograph was taken at her engagement on February 17, 2007. The AAO notes that the other photographs submitted were either taken outside of the two-year time period prior to filing or were not dated. The AAO finds that the petitioner has established that she and the beneficiary met in February 2007, during the two-year time period prior to filing. Furthermore, the AAO finds that as the record now includes a decree from a circuit court in accordance with the FAM instructions, the petition has met her burden of proof in regards to documenting the beneficiary's divorce.

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 now met that burden.

**ORDER:** The appeal is sustained.