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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

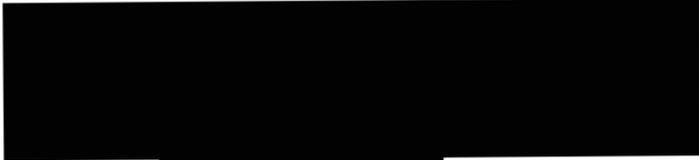


U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

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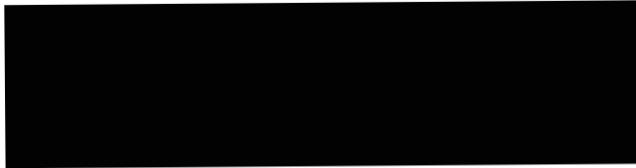
Petitioner:

Beneficiary:



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:



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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiancé(e) 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).

The director denied the nonimmigrant visa petition because the petitioner failed to demonstrate that he and the beneficiary were legally free to enter into a marriage at the time the petition was filed. On appeal, the petitioner submits a personal affidavit dated August 20, 2009, stating, in part, as follows: that the March 26, 1996 affidavit of Dissolution of Marriage from [REDACTED] was provided to U.S. Citizenship and Immigration Services (USCIS) as evidence in a previously approved petition filed by him on behalf of his former wife, [REDACTED] that USCIS has previously-approved similar petitions with similar affidavits submitted as supporting documentation; and that “the court system of the East-Central State of Nigeria was altered in 1971 to place jurisdiction in cases of divorce ‘between persons married under customary law’ in the Magistrate’s Courts.” As supporting documentation, the petitioner submits copies of previously submitted documentation and an AAO decision dismissing an appeal of the denial of an application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act.

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

Subject to subsections (d) and (p) of section 214, 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 in pertinent part that a fiancé(e) petition:

[s]hall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 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

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on September 5, 2008. At the time of filing, the petitioner submitted, *inter alia*, a “Sworn Affidavit of Dissolution of Marriage Under the Native Law and Customs” in the “Chief Magistrates’ Court of Lagos State,” declared and signed by [REDACTED] on March 26, 1996, as evidence of the legal termination of his marriage to [REDACTED]

On February 4, 2009, the director issued a request for evidence (RFE), requesting, in part, that the petitioner submit evidence of the legal termination of his marriage to Florence Otoighile. The director notified the petitioner that the “Sworn Affidavit of Dissolution of Marriage Under the Native Law and Customs” was not acceptable for immigration purposes, and that, according to the Department of State Foreign Affairs Manual (FAM):

Marriage under native law and custom can only be dissolved by the customary court having jurisdiction over the area where the marriage took place. The proper documentation for customary divorce is a certificate of divorce rendered by a customary court, which will contain a true and certified copy of the proceedings. There are two exceptions. Between 1971 and 1976, [REDACTED] and [REDACTED] states, then known as “East Central State”, permitted Chief Magistrate’s Courts there to grant customary divorces. As of 1976, Imo state is the only state where Chief Magistrate’s Courts can issue customary divorce decrees. **Divorce by traditional rulers, affidavits and statutory declarations of divorce, even when authentic, have no standing under Nigerian law.**¹

In his April 28, 2009 response to the director’s RFE, the petitioner stated that he was still waiting for the evidence from [REDACTED] which he would forward at a later date. On June 16, 2009, the petitioner submitted three additional documents: a “First Civil Summons”; a “Claim”; and an “Enrolment of Judgment” and related receipt. The “First Civil Summons” is dated April 16, 2009, and issued from the Customary Court, Edo State of Nigeria, listing [REDACTED] as the plaintiff and the petitioner as the defendant, and notifies the petitioner to appear on April 22, 2009, “at a court Idogbo.” The “Claim” is also dated April 16, 2009, and issued by the Ikpoba Okha Customary Court in the Area Customary Court Edo State, and states that the [REDACTED] and the petitioner were married on January 15, 1995 at Oka Village, Upper Sakponba, Benin City, within the jurisdiction of the same court, and requests a dissolution of the marriage. The “Enrolment of Judgment” was issued on June 5, 2009 by the Customary Courts Edo State of Nigeria, in the Ikpoba-Okha Area Customary Court Registry, Idogbo, and dissolves the marriage between the petitioner and [REDACTED]

The director denied the nonimmigrant visa petition because the petitioner failed to demonstrate that he and the beneficiary were legally free to enter into a marriage at the time of filing.

On appeal, the petitioner states that he has submitted sufficient evidence to show that he is legally free to marry the beneficiary.

The petition is not approvable. The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on September 5, 2008. The petitioner has not submitted evidence to demonstrate that, at the time of filing, he was legally divorced from [REDACTED]. The AAO disagrees with the petitioner’s assertion on appeal that the March 26, 1996 affidavit of Dissolution of Marriage from [REDACTED] is acceptable proof of the dissolution of their marriage. As discussed above, the proper documentation for customary divorce is a certificate of divorce rendered by a customary court having jurisdiction over the area where the marriage took place. In this matter, the evidence indicates

¹ Department of State Reciprocity Schedule, Nigeria accessed at http://travel.state.gov/visa/frvi/reciprocity_3640.html (February 8, 2010).

that the petitioner and [REDACTED] were married on January 15, 1995 at Oka Village, Upper Sakponba, Benin City, which is under the jurisdiction of the Ikpoba Okha Customary Court in the Area Customary Court Edo State, Nigeria. Thus, to show that he is legally divorced from [REDACTED] the petitioner must submit a certificate of divorce rendered by the Ikpoba Okha Customary Court in the Area Customary Court Edo State, Nigeria.

The petitioner noted that USCIS approved another petition that had been previously filed on behalf of the petitioner's former wife, [REDACTED] using the same affidavit as supporting documentation. The petitioner also noted that USCIS also approved "previous filings by other Petitioners." The record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. It must be emphasized that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Moreover, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

On appeal, the petitioner submits an August 18, 2008 AAO decision, dismissing an appeal of the denial of an application for permanent resident status under the LIFE Act. The petitioner asserts that the same decision shows that the AAO "accepted Nigerian Affidavits of Dissolution of Marriage in other Immigration Cases." In the same decision, the AAO listed the applicant's documents related to the applicant's previous marriages, comparing them to the applicant's own statement. The AAO concluded that the applicant lacked credibility, and ultimately upheld the director's decision to deny the application. The issue in that proceeding was not the legality of the divorce affidavit. Nor did the AAO make a determination of its legality. Thus, the petitioner has not shown that the August 18, 2008 AAO decision is relevant to this proceeding.

The petitioner states further that he followed the director's instructions and obtained a certificate of divorce. The AAO acknowledges the "Enrolment of Judgment," issued on June 5, 2009 by the Customary Courts Edo State of Nigeria, in the Ikpoba-Okha Area Customary Court Registry, Idogbo. Nevertheless, the petitioner was not legally free to conclude a valid marriage with the beneficiary when the petition was filed. It is the date of filing the petition that controls here. It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and the beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. In addition, USCIS

regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. 8 C.F.R. 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Accordingly, the AAO cannot find that the petitioner was legally able to conclude a valid marriage with the beneficiary when the petition was filed. Accordingly, the appeal is dismissed. The petition must be denied.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, he should ensure that he submits all of the required supporting documentation. If necessary, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that he should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his home.

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 not met that burden.

ORDER: The appeal is dismissed. The petition is denied.