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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

[redacted]

D6

Date: MAR 21 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner:
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:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native of Saudi Arabia and a citizen of Jordan, 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 establish that he and the beneficiary were legally free to marry when the petition was filed. On appeal, the petitioner submits a statement and additional evidence.

Applicable Law

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:

> shall 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 . . . .

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on September 14, 2010. When he filed the petition, the petitioner indicated that he was previously married to A-M- and O-A-[1], and that the marriages had ended on January 11, 2007 and August 24, 2008 respectively. On July 7, 2011, the director issued a Request for Evidence (RFE) for, *inter alia*, a final divorce decree establishing the termination of his marriage to A-M-. The director noted that the revocable divorce decree the petitioner had submitted does not show his divorce from A-M- as being final. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish that his divorce from A-M- was final. The director determined that the petitioner remained legally married to A-M- when he filed the fiancé(e) petition, and therefore he could not establish that he was legally free to marry the beneficiary.

[1] Names withheld to protect the individuals' identity.

On appeal, the petitioner states that he traveled abroad to obtain the final divorce decree from the Supreme Judge of the Sharia Court in Amman, Jordan. He provides his flight itinerary, boarding passes and passport admission stamp as evidence of his travel to Amman in October 2011. He also provides a document entitled "declaration of deed of no-return" from the Sharia Court of Amman.

Analysis

Section 214(d)(1) of the Act requires the submission of evidence to establish that the petitioner and the beneficiary are "legally able . . . to conclude a valid marriage in the United States. . . ." A marriage will be valid for immigration purposes only where any prior marriage of either party has been legally terminated and both individuals are free to contract a new marriage. *See Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). 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 fiancé(e) petition is filed.

Upon a full review of the record, we find that the petitioner has established that he was free to marry at the time of filing the petition. The petitioner initially submitted a document entitled "revocable first divorce deed" issued by the Sharia Court in Shmaisani/Amman on November 1, 2007. The deed provides that on October 29, 2007, the petitioner had a dispute with A-M- and he pronounced three times that they are divorced. The decree states that the petitioner's wife must go through a legal waiting period effective November 1, 2007 prior to receiving a divorce. In response to the RFE, the petitioner stated that his divorce from A-M- became final because they did not reunite within the 90-day waiting period. The petitioner submitted a statement, dated August 9, 2011, certified by the judge of the Sharia Court in Amman, which provided that there is no record that the petitioner returned to A-M- during the religiously prescribed period of "iddat." The director found this document to be insufficient because the petitioner did not submit a final divorce decree.

On appeal, the petitioner submits a declaration deed of no-return, which provides that the petitioner came before the Sharia Court of Amman and declared that he did not return to A-M- during the legal waiting period and his divorce became a "minor-degree final divorce" because A-M-'s period of waiting had elapsed. The court declared that "based on the application, it has been decided to register same to be acted upon accordingly."

In *Matter of Hassan*, the Board of Immigration Appeals (BIA) noted that a divorce in Jordan "is effected by means of repudiations of the wife by the husband." 11 I. & N. Dec. 179, 181 (BIA 1965). The BIA stated that these modes are:

> [A] single pronouncement of repudiation which is revocable within three months by express words or conduct; by three successive pronouncements during three successive periods, with the marriage finally being dissolved on the third repudiation; by three successive pronouncements of repudiation made on a single occasion, probably before witnesses; or by a single irrevocable declaration in writing (bill of divorce) which is final immediately, but must be communicated to the wife.
>
> *Id.* at 181-82.

In this case, the revocable divorce decree provided that the petitioner issued three successive pronouncements of repudiation made on a single occasion, October 29, 2007.

The BIA stated that the beneficiary in *Matter of Hassan* had a judgment, dated May 6, 1962, that "was a revocable divorce and did not cancel the marriage definitely during the test or idda period of three months thereafter." *Id.* at 182. The BIA determined, "[t]here is no indication that the beneficiary returned to his first wife during the revocable period, that is, during the idda period of three months. The divorce, therefore, became final as of May 6, 1962." *Id.* Here, the petitioner has submitted sufficient, credible evidence in response to the RFE and on appeal to establish that he did not return to A-M- during the three-month iddat period. Accordingly, the petitioner's divorce became final as of the date of the revocable divorce decree, November 1, 2007 and as evidenced by the declaration deed of no-return issued by the Sharia Court of Amman. He was therefore free to marry at the time he filed the Form I-129F petition on September 14, 2010.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden and overcome the basis of the director's denial. The appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.