

(b)(6)

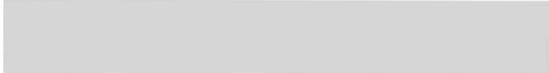
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: JUL 16 2015



IN RE: 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:

NO REPRESENTATION OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (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 native and citizen of Pakistan, as the fiancée of a U.S. 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, finding that the petitioner failed to submit proof of the legal termination of his prior marriage.

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, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a Form I-129F, Petition for Alien Fiancé(e) (Form I-129F), including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

Factual and Procedural History

The petitioner filed the Form I-129F on June 6, 2012, without sufficient supporting evidence. The director issued a request for additional evidence, specifically asking the petitioner to provide evidence of meeting the beneficiary in person in the two years preceding the filing of the petition or, in the alternative, evidence that compliance with this requirement would result in extreme hardship to him or violate strict and long-established customs of the beneficiary's foreign culture or social practice. In response, the petitioner submitted evidence of meeting in person during the requisite period.

The director also requested evidence of the legal termination of the petitioner's prior marriage. In response, the petitioner provided his own statement, titled "Notice of Divorce," and a letter. The director denied the petition, finding that the petitioner had failed to submit a divorce decree issued by a civil authority.

On appeal, the petitioner asserts that the evidence of his divorce is valid. He states that his former wife, a native of Pakistan living in Saudi Arabia, signed his notice of divorce and brought it to the Pakistan consulate for registration. He attaches a copy of his notice, signed by his wife, acknowledging receipt of the document. The petitioner does not provide evidence or legal authority to show that the notice was registered or that such registration would constitute a civil authority's validation of the marriage's termination.

The petitioner, a native of Pakistan, and resident of New York, says that his first marriage ended on [REDACTED]. The petitioner submits a copy of his declaration, dated [REDACTED] stating he has no option but to give his former wife a divorce, but the divorce is conditional upon his former wife returning all items detailed in an attachment.¹

In a letter dated January 12, 2013, the imam and director of the [REDACTED] stated the petitioner married his former wife in Saudi Arabia on [REDACTED] his former wife requested a *khula* (divorce); and the petitioner agreed and stated so three times in his written and notarized statement, dated [REDACTED]. The imam opined that this divorce becomes valid under Islamic law, provided it is unconditional. According to the imam, the petitioner therefore must withdraw his original condition that his former wife return the items given her in marriage as dowry, in addition to monetary gifts she may have received before the marriage.

Analysis

A divorce that is valid where rendered generally is deemed valid for immigration purposes. *See Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983)(foreign divorce decree valid where rendered is recognized under the principle of comity, provided that recognition would not contravene public policy). Moreover, a religious divorce, valid in the jurisdiction where granted, is valid provided that both parties to the marriage were properly subject to the jurisdiction of the tribunal granting the decree. In these circumstances comity requires recognition of foreign religious divorces. *Miller v. Miller*, 128 N.Y.S. 787 (1911); *see also Leshinsky v. Leshinsky*, 25 N.Y.S. 841 (1893) (recognizing religious divorce granted in foreign jurisdictions that permitted it).

However, in *Shikow v. Murff*, 257 F.2d 306 (2nd Cir. 1958), the court stated:

Though a divorce secured in the manner indicated in the case at bar would appear to be valid when obtained in Pakistan, and if so obtained might well receive recognition here, nevertheless it was not valid when obtained in the territorial jurisdiction of New York. While a divorce decree rendered in a foreign jurisdiction between persons domiciled therein is recognized in the United States because of the requirements of international comity,

¹ The petitioner did not submit the attachment with his Form I-129F or on appeal.

nevertheless this recognition does not extend to divorces obtained within the territorial jurisdiction of the State of New York between persons not domiciled therein. Where the divorce is obtained within the jurisdiction of the State of New York, it must be secured in accordance with the laws of that State.

Id. at 308-09.

As in *Shikow v. Murff*, the petitioner claims to have obtained an Islamic divorce while he resided in New York.² Even if the conditions he placed on divorce had been removed, the petitioner has not established that his Islamic divorce is valid in New York. In order for the legal termination of a marriage to be considered valid for immigration purposes, it must have been secured in accordance with the laws of that state. The petitioner has not established the legal termination of his prior marriage.

Conclusion

The appeal will be dismissed for the above stated reasons. In fiancée visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. As stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition.

ORDER: The appeal is dismissed.

² Assuming the imam's opinion correctly describes a valid Islamic divorce, it does not appear the petitioner's divorce is final, because he has not shown that he withdrew his original condition that his former wife return all of the items given her in engagement and in marriage.