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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] MSC 03 116 60340

Office: NATIONAL BENEFITS CENTER

Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

MAR 29 2004

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

ON BEHALF OF PETITIONER:

[Redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, National Benefits Center, and 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 Korea, as the fiancée of a United States citizen, pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 101(a)(15)(K).

The acting director denied the petition after determining that the petitioner failed to submit evidence to establish that the Petition for Alien Relative (Form I-130) was filed prior to the Petition for Alien Fiancé(e) (Form I-129F) as required. *See* Decision of the Acting Director, dated May 29, 2003.

Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category 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 admission, and the minor children of such fiancée or fiancé accompanying him or following to join him. .

Section 101(a)(15)(k)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(k)(ii), states, in part, that an alien who—

(ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa....

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 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 Attorney General in his discretion may waive the requirement that the parties have previously met in person....

8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(k)(ii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F . . .

The Form I-129F petition was filed with the National Benefits Center on January 24, 2003. The record reflects that a Petition for Alien Relative (Form I-130) filed by the petitioner on behalf of the beneficiary was initially rejected by the Vermont Service Center. However, a subsequent Form I-130 was properly filed on June 16, 2003, after the filing of the Form I-129F. Since the petitioner has now properly filed the Form I-130, he may file a new Form I-129F petition with the National Benefits Center in an effort to obtain K-3/K-4 visa status for

the beneficiary under the Legal Immigration Family Equity Act.

However, the appeal will be dismissed because the decision of the acting director was correct; the Form I-130 was not filed prior to submission of the original Form I-129F petition. This decision is without prejudice to the filing of a new petition (Form I-129F) after the Form I-130 petition has been filed on behalf of the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.