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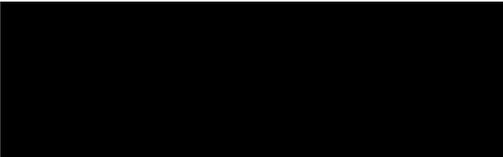


U.S. Citizenship  
and Immigration  
Services

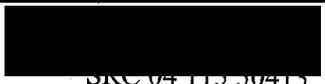
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APR 20 2005



FILE:



Office: TEXAS SERVICE CENTER

Date:

SRC 04 115 30413

IN RE:

Petitioner:



Beneficiary:

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: 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a lawful permanent resident of the United States who seeks to classify the beneficiary, a native and citizen of Germany, 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. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had not offered documentation evidencing that he was a United States citizen at the time of the filing of the Form I-129F petition as required under section 101(a)(15)(K) of the Act. *Decision of the Director*, dated June 25, 2004.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (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; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

On appeal, the petitioner states that Citizenship and Immigration Services (CIS) did not consider that he receives a social security check from Germany every month and that the beneficiary will likewise receive payments from Germany. He states that if CIS can guarantee that the German government will not reduce or stop his payments, he will apply for United States citizenship. He indicates that he feels unfairly treated by the denial. *Letter from Gerd M. Westhoff*, dated July 1, 2004.

The record on appeal does not evidence that the petitioner was a United States citizen at the time of the filing of the Form I-129F petition on March 29, 2004. The law is very specific in this matter. Only United States citizens can file a fiancée petition. Exceptions cannot be made for any reason. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

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.

**ORDER:** The appeal is dismissed.