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U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

AUG 05 2005

WAC 04 190 51083

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 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, California 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 who seeks to classify the beneficiary, a native and citizen of Cambodia, 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 was not a U.S. citizen and, therefore, not eligible to file a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the beneficiary. *Decision of the Director*, dated September 13, 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.

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 two 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 Form I-129F with Citizenship and Immigration Services on June 24, 2004. On appeal, he provides a copy of his certificate of naturalization issued on September 9, 2004. While the petitioner is now a U.S. citizen, he was a lawful permanent resident on the date of filing. As just noted, section 101(a)(15)(K)(i) of the Act, 8 U.S.C. § 1101(a)(15)(K)(i), provides nonimmigrant classification only to aliens who are the fiancé(e)s of U.S. citizens. Therefore, at the time he filed the instant petition, the petitioner was ineligible to do so. Accordingly, the appeal will be dismissed.

The denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf. The AAO notes that any new Form I-129F must, again, be filed within two years of a meeting between the petitioner and beneficiary, as required by section 214(d) of the Act.


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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.