

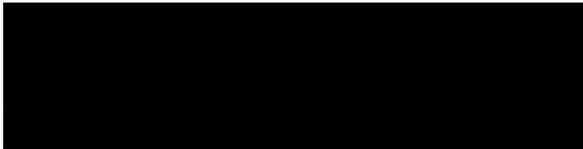
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 31 2005**
EAC 04 246 51535

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 Acting Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to bring the beneficiary, a native and citizen of Ethiopia, to the United States pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The acting director denied the petition because she determined the beneficiary, as the child of the petitioner, could not benefit from a Form I-129F, Petition for Alien Fiancé(e), filed under section 101(a)(15)(K) of the Act. *Decision of the Director*, dated October 27, 2004.

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 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....

The record reflects that the petition was filed with the service center on September 13, 2004. At the time of filing, the petitioner submitted a birth certificate documenting the beneficiary as her child. On appeal, she contends that if a fiancé(e) of a U.S. citizen may receive a visa, then the child of a U.S. citizen should be able to obtain a visa to enter the United States.

Based on the petitioner's statements on appeal, it appears that she may have misunderstood the effect of the amendments made to the language of section 101(a)(15)(K) of the Act by the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000). Those changes allow U.S. citizens to file Form I-129F fiancé(e) petitions for minor children who are accompanying or following to join parents who are or have been the beneficiaries of approved Form I-129F petitions.

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.

The beneficiary is, however, the petitioner's child, rather than the child just described in section 101(a)(15)(K)(iii) of the Act. Therefore, he is not eligible for the benefit the petitioner is seeking and the appeal must be dismissed.

The petitioner may, however, file a Petition for Alien Relative (Form I-130) to bring her child to the United States as an immediate relative – the spouse; minor, unmarried child; or parent – of a U.S. citizen. Section 204(a)(1)(A)(i), 8 U.S.C. § 1154(a)(1)(A)(i). Immigrants who are the immediate relatives of U.S. citizens are not subject to the numerical limitations that govern other family-based immigration categories. As a result, they may come to the United States as soon as an immigrant visa petition is approved on their behalf.

ORDER: The appeal is dismissed.