



U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: AUG 31 2005
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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 Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 the Ukraine, 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 because he found that the petitioner had failed to comply with the petition's filing instructions, specifically that he had submitted no documentation to establish that his previous marriages had been legally terminated at the time of filing. *Decision of the Director*, dated May 17, 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 fiance(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....

It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with the Service on October 20, 2003. At that time, he indicated that he had three previous marriages, but submitted no documentation indicating that these relationships had been terminated. The petitioner also failed to provide evidence of the termination of his previous marriages in response to the director's request for evidence. On appeal, he submits a divorce decree for the beneficiary's previous marriage, a marriage not identified at the time of filing, and a letter from the marriage license department for Pierce County, Washington stating their records for 1984 through May 25, 2004 show only a 1985 marriage certificate in the petitioner's name. A handwritten statement from the petitioner indicates that he is waiting for copies of more "paperwork."

The AAO finds that the record on appeal continues to lack the documentation required to prove that the petitioner's previous marriages had been legally terminated as of October 20, 2003, the date on which he filed the Form I-129F. As a result, he has not established his ability to marry the beneficiary within 90 days of her arrival in the United States, as required by section 214(d) of the Act. Accordingly, the appeal is dismissed.

The denial of this petition is without prejudice. Should the petitioner obtain documentation to establish the legal termination of his previous marriages, he may file a new I-129F petition on behalf of the beneficiary. Per the requirements of 214(d) of the Act, a new petition must be filed within two years of a meeting between the petitioner and the beneficiary.

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.