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FILE: [REDACTED]
LIN 03 182 53846

Office: NEBRASKA SERVICE CENTER

Date: **AUG 31 2005**

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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Kenya, 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 the record failed to establish that the petitioner and beneficiary had met within the two-year period immediately preceding the filing of the Form I-129F, as required by section 214(d) of the Act. He further determined that the petitioner was not eligible for an exemption from the meeting requirement as he had failed to prove that compliance with that requirement would have constituted an extreme hardship for him or would have violated the customs of the beneficiary's culture or social practice. *Decision of the Director*, dated September 19, 2003.

In his September 24, 2003 appeal, the petitioner contends that tribal custom precludes marriage between members of the same Somali clan and prevented his meeting with the beneficiary during the specified period. However, the record indicates that the petitioner, subsequent to filing the appeal, married the beneficiary in Kenya on March 19, 2004. As the meeting requirement of section 214(d) of the Act applies only to the adjudication of Form I-129Fs filed on behalf of fiancées, the AAO finds the basis for the petitioner's appeal to be mooted. Instead, it will consider whether the beneficiary, as the petitioner's spouse, may benefit from the instant Form I-129F.

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) has amended the language of section 101(a)(15)(k) of the Act to allow U.S. citizens to file Form I-129F fiancé(e) petitions for their spouses if they have already filed Form I-130 alien relative petitions on their behalf.

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....

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....

As the petitioner's marriage to the beneficiary occurred after his May 19, 2003 filing of the Form I-129F, he cannot establish that a Form I-130 immigrant visa petition based on his marriage was pending on that date, as

required by section 101(a)(15)(k)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(k)(ii). Accordingly, the beneficiary cannot benefit from the instant petition and the petitioner's appeal is dismissed. The petition is denied.

The denial of this petition is without prejudice. A check of Citizenship and Immigration Services databases indicates that the petitioner filed a Form I-130 petition on behalf of his spouse on April 19, 2004. He may, therefore, file a new Form I-129F petition on her behalf in accordance with the above statutory requirements.

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.