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U.S. Citizenship
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Services

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MAR 02 2005

FILE:

WAC 03 259 50103

Office: CALIFORNIA SERVICE CENTER

Date:

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

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 citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, 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 submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. *Decision of the Director*, dated April 02, 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. . . .

In response to the director's request for evidence and additional information, the petitioner submitted the original copy of the Notarial Divorce Certificate for the beneficiary and the beneficiary's prior spouse.

On appeal, the petitioner provides a statement indicating that he met the beneficiary in China on July 27, 2003. He states that his passport reflects when he arrived and departed. The petitioner further states that he is single and has never been married. He states that he is submitting a notarial certificate of the beneficiary as secondary evidence. *Attachment to Form I-290B*, dated April 26, 2004. The petitioner submits 10 color photographs including eight of the petitioner and the beneficiary together; the original copy of the Notarial Certificate of the beneficiary; a color copy of the United States passport issued to the petitioner reflecting entry into China on July 27, 2003 and a notarized Certification of No Record of Marriage for the petitioner, dated April 12, 2004.

The AAO notes that, on appeal, the petitioner fails to provide evidence of the termination of the prior marriage of the beneficiary as instructed by the director in the Form I-797 mailed to the petitioner on March 18, 2004. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO finds that the

petitioner has not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. 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.