



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 04 182 50155

Office: VERMONT SERVICE CENTER

Date: NOV 22 2005

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, Vermont 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 Dominican Republic, 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 record indicates that the petitioner has retained counsel in the Dominican Republic and includes a signed Form G-28. However, the petitioner may not be represented by an attorney outside the United States in matters within the geographical confines of the United States. *See* 8 C.F.R. § 292.1(a)(6). Accordingly, the AAO finds the petitioner to be self-represented in this proceeding.

The record reflects that the petition was filed with the service center on May 26, 2004. At the time of filing, the petitioner submitted a marriage certificate documenting his marriage to the beneficiary on January 8, 2000. Therefore, the beneficiary is the petitioner's wife, rather than his fiancée.

However, as noted by the director, 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) to benefit 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....

Further discussion of how a spouse may come to the United States under section 101(a)(15)(k) of the Act is found at 8 C.F.R. § 214.2(k)(7), which 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....

There is no evidence in the record that a Form I-130 visa petition was filed by the petitioner on behalf of his wife prior to his submission of the Form I-129F. Instead, the director's denial indicates that the petitioner submitted a Form I-130 to benefit his wife on August 20, 2004 in response to the director's notice of intent to deny. As a result, the beneficiary cannot benefit from the instant petition under the requirements of section 101(a)(15)(k) of the Act. Therefore, the appeal is dismissed.

The denial of the petition is without prejudice and the AAO notes that the director has already advised the petitioner that he may file a new Form I-129F on behalf of the beneficiary. The director's February 16, 2005 denial indicated that following the filing of the Form I-130, the petitioner submitted a new Form I-129F to benefit

his wife, which was not receipted and was returned to the petitioner. The director advised the petitioner to file the petitioner, with the appropriate fee and proof of his filing of the I-130, with the Missouri Service Center.

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.