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**U.S. Citizenship
and Immigration
Services**

D6



FILE: 
EAC 05 079 52950

Office: VERMONT SERVICE CENTER

Date: **NOV 28 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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Haiti, as the fiancé 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 that the petitioner had failed to submit all documents required to support her filing of the Form I-129F, and to establish that, at the time of filing, she was legally free to marry the beneficiary. *Decision of the Director*, dated March 30, 2005.

Section 101(a)(15)(K) of the Immigration and Nationality Act (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. . . .

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 January 26, 2005. However, she failed to submit proof of the termination of her previous marriage at that time. In response to the director's request for evidence that she was free to marry the beneficiary, the petitioner submitted an English translation of a regional death certificate, rather than the actual Haitian document, with an English translation, as indicated by the director. This evidence is insufficient proof that the petitioner's previous spouse is deceased.

Pursuant to 8 C.F.R. § 103.2 (a)(1):

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations in this chapter requiring its submission Each application or petition must be

accompanied by the documents required by the particular section of the regulations under which submitted.

The petitioner, at the time of filing, did not submit photographs of herself and beneficiary, nor did she provide completed Form G-325As for herself and the beneficiary, as required by the instructions accompanying the Form I-129F. In response to the director's request for evidence, the petitioner submitted a photograph of herself and G-325A for herself, but not for the beneficiary.

In her April 15, 2005 appeal, the petitioner states that she forwarded the beneficiary's photograph and his Form G-325A to the service center, subsequent to submitting her own documentation, noting that the director's request for evidence gave her until May 14, 2005 to submit the information requested. She also indicates that she will submit a brief and/or additional evidence within 30 days of filing the appeal. However, more than six months later, the petitioner has submitted no evidence in support of her appeal.

The AAO notes that the beneficiary's photograph and Form G-325A, submitted in response to the director's request for evidence, were received by the service center on May 31, 2005. However, as the petitioner did not submit this documentation at the time she first responded to the director's request for evidence, it was not considered. A petitioner must submit all evidence in response to a request for evidence at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record. 8 C.F.R. § 103.2(b)(11).

Even though the beneficiary has complied with the documentary requirements for filing a Form I-12F, the petition cannot be approved. The documentation submitted by the petitioner to establish the death of her husband is, as already noted by the director, insufficient to establish that, at the time of filing, she was legally able to marry the beneficiary and, therefore, eligible to submit the Form I-129F. Accordingly, the appeal is dismissed.

The denial of this petition is without prejudice. If the petitioner is able to establish that she is legally free to marry the beneficiary, she may file a new I-129F petition on the beneficiary's behalf in accordance with the 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.