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FILE: [REDACTED]
LIN 04 096 53515

Office: NEBRASKA SERVICE CENTER

Date: **SEP 06 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 Acting Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks to classify the beneficiary, a native and citizen of Samoa, 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 acting director denied the petition after determining that the petitioner had failed to submit evidence that both of her previous marriages had been legally terminated at the time the petition was filed. *Decision of the Acting Director*, dated January 20, 2005.

The AAO agrees that the record before it does not establish that the petitioner's marriage to her first husband was legally terminated at the time of filing. However, it also finds that the petitioner, born in American Samoa and, therefore, a U.S. national, is not eligible to file a Form I-129F petition on behalf of the beneficiary.

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.

The petitioner's Form I-129F indicates that she holds U.S. citizenship based on her birth in the United States. However, the petitioner was born in 1949 in Leone, American Samoa, which is defined in section 101(a)(29) of the Act, 8 U.S.C. § 1101(a)(29) as an "outlying possession" of the United States. Her birth certificate lists both her parents as U.S. nationals. Pursuant to section 308(1) of the Act, 8 U.S.C. § 1408(1), an individual born in an outlying possession of the United States on or after the date of formal acquisition of such possession, to parents who are not U.S. citizens, is a national of the United States, but not a citizen. As American Samoa became an unincorporated territory of the United States in 1899 as a result of a treaty between Germany and the United States, the beneficiary's 1949 birth provides her with the status of U.S. national.

However, section 101(a)(15)(K)(i) of the Act, 8 U.S.C. § 1101(a)(15)(K)(i), provides nonimmigrant classification only to aliens who are the fiancé(e)s of U.S. citizens. Accordingly, as the petitioner is not a citizen of the United States, she was not eligible to file the Form I-129F on behalf of the beneficiary. Therefore, the appeal will be dismissed and the petition will be denied.

The basis for the AAO's denial of the instant petition differs from that provided by the director. However, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if a service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. 2001), *aff'd* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).



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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.