

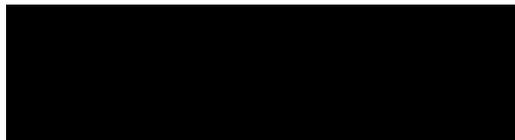
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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FILE: [Redacted]  
EAC 04 141 50882

Office: VERMONT SERVICE CENTER

Date:  
SEP 22 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 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, 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 lawful permanent resident of the United States who seeks to classify the beneficiary, a native and citizen of Poland, 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 offered documentation evidencing that he was a United States citizen at the time of the filing of the Form I-129F petition as required under section 101(a)(15)(K) of the Act. *Decision of the Director*, dated November 6, 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. . . .

On appeal, the petitioner states that he would like to bring the beneficiary to the United States. The petitioner indicates that he and the beneficiary would like to get married in the United States and live like a normal family. *Form I-290B*, dated December 6, 2004. The AAO notes that the petitioner indicated that he would provide additional documentation within 30 days of filing the appeal. Over nine months have passed since the filing of the Form I-290B appeal and no further documentation has been received into the record in order to be considered in this decision.

The appeal will be dismissed because the beneficiary cannot be classified as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), because the record on appeal does not evidence that the petitioner was a United States citizen at the time of the filing of the Form I-129F petition. 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. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.