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

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FILE: [REDACTED]
WAC 04 164 54731

Office: CALIFORNIA SERVICE CENTER

Date: SEP 30 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Alien Fiancé(e) Pursuant to § 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, 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 Laos, as the fiancée of a United States citizen pursuant to § 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 evidence that he and the beneficiary had personally met within two years before the date of filing the petition, as required by § 214(d) of the Act. On appeal, the petitioner states that he visited his fiancée in Laos in February 2002, at which time the couple was married. The petitioner includes photos of a ceremony on appeal. The petitioner indicated on the Notice of Appeal Form I-290B that he would send a brief and/or evidence to the AAO within thirty days; however, as of this date, the AAO has not received any additional evidence. Therefore, the record is complete.

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. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements

have been or will be met in accordance with the custom or practice.

The petitioner did not claim that the required meeting would cause him extreme hardship or would violate his fiancée's customs.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) on May 12, 2004; therefore, the petitioner and the beneficiary were required to have met during the period that began on May 12, 2002 and ended on May 12, 2004. In response to the director's request for evidence and additional information, the petitioner submitted photographs of the petitioner and the beneficiary together, and he stated that he went to Laos to meet the beneficiary on February 26, 2002. He also stated that he and the beneficiary became engaged on March 14, 2002. Neither of these dates fell within the two year period immediately preceding his filing the petition.

On appeal, the petitioner states that he married the beneficiary in February 2002. If this is the case, the beneficiary cannot be classified as the fiancée of a U.S. citizen pursuant to § 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), because she and the petitioner are already married. The AAO notes, however, that the beneficiary may be eligible for classification as a K-3 nonimmigrant. 8 C.F.R. § 214.2(k)(7) 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 . . .

If the beneficiary seeks to be classified as a K-3 nonimmigrant, the regulations at 8 C.F.R. § 214.2(k)(7) require that a Form I-130 Petition for Alien Relative be approved *prior* to the filing of a Form I-129F petition on behalf of the beneficiary.

The instant appeal is dismissed for the reasons discussed above. 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* § 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.