



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] WAC 05 050 54454

Office: CALIFORNIA SERVICE CENTER

Date: FEB 14 2006

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:



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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Cuba, 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 submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. *Decision of the Director*, dated May 18, 2005.

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. . . .

The director determined that the petitioner did not comply with Citizenship and Immigration Services's request for a divorce decree or certificate evidencing the termination of the petitioner's prior marriage and therefore, the director was unable to determine if the petitioner is presently free to marry the beneficiary.

On appeal, counsel provides a letter attesting to the petitioner's stay at a hotel in Cuba during 2003 with English translation and a copy of a divorce decree with English translation. The AAO notes that the original Request for Evidence, dated February 8, 2005, a copy of which is provided by counsel on appeal, states in pertinent part:

Any document written in another language other than English must be submitted with a full English language translation. The translator must certify that the translation is complete and accurate and that he or she is competent to translate.

On appeal, counsel provides two documents written in a foreign language with English translations. Neither provided translation is accompanied by a certification from the translator that he or she is competent to translate

and that the translation is complete and accurate. The AAO finds, therefore, that the two referenced foreign language documents cannot be considered as submitted.

The record on appeal fails to establish that the petitioner was legally able and actually willing to conclude a valid marriage in the United States at the time of the filing of the Form I-129F petition. Therefore, the appeal will be dismissed.

Moreover, under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between December 7, 2002 and December 7, 2004, the two-year period immediately preceding the filing of the Form I-129F petition. The evidence of record is inconclusive as to whether the petitioner and the beneficiary met as required. The AAO acknowledges counsel's assertion that the petitioner traveled to Cuba during 2003 as evidenced by entry stamps contained in the petitioner's Cuban passport. *See Letter from* [REDACTED] [REDACTED] dated July 11, 2005. The AAO notes, however, that the record does not contain any evidence proving that the petitioner and the beneficiary met during the petitioner's trip to Cuba during 2003. In response to question 19 on the Form I-129F petition, the petitioner stated "I met her for about [sic] 12 years ago and I had a son with her." The record fails to contain any assertion by the petitioner or counsel, supported by documentary evidence, indicating that the petitioner and the beneficiary met during the required two-year period. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. 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.