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U.S. Citizenship
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FILE: [Redacted]
WAC 05 184 53384

Office: CALIFORNIA SERVICE CENTER Date: JUL 10 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 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, Chief
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 sustained.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native of Afghanistan, 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 because he found the beneficiary's marriage to the petitioner prior to the filing of the petition prevented her from benefiting as a fiancée under section 101(a)(15)(K) of the Act. *Decision of the Director*, dated November 8, 2005.

Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category as:

An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission, and the minor children of such fiancée or fiancé accompanying him or following to join him.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiance(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 2 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, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person....

The record reflects that the petition was filed with the service center on June 17, 2005. In response to the director's request for evidence, the petitioner submitted a copy of a marriage certificate indicating that he and the beneficiary were married in a traditional Afghan ceremony on May 27, 2005 in the Federal Republic of Germany. Based on this documentation, the director determined the beneficiary was the petitioner's wife, not his fiancée and was, therefore, ineligible for any benefit under section 101(a)(15)(K) of the Act. The AAO does not agree with either of the director's findings.

It turns first to the director's conclusion that the beneficiary would be unable to benefit from section 101(a)(15)(K) of the Act if married to the petitioner.

The Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) has amended the language of section 101(a)(15)(k) of the Act to allow U.S. citizens to file Form I-129F fiancé(e) petitions for their spouses if they have already filed Form I-130 alien relative petitions on their behalf.

Section 101(a)(15)(k)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(k)(ii), states, in part, that an alien who—

(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....

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....

Accordingly, the AAO withdraws the director's finding that the spouse of a U.S. citizen may not benefit from a Form I-129F.

The AAO now considers whether the record establishes the beneficiary as the petitioner's spouse.

The evidence of record includes a copy of a marriage certificate submitted by the petitioner for a marriage ceremony that took place in the Federal Republic of Germany on May 27, 2005. However, that certificate, which documents a traditional Afghan ceremony, is not accompanied by any proof that it was recognized by the German government, the only evidence sufficient to establish the petitioner's marriage for U.S. immigration purposes.

To satisfy U.S. immigration requirements, a marriage must be legally recognized by the country in which it took place. As the Federal Republic of Germany recognizes only civil wedding ceremonies,¹ the petitioner's submission of his traditional wedding certificate does not establish a marriage that may be recognized by U.S. immigration law. Accordingly, the AAO withdraws the director's finding with regard to the petitioner's marriage.

For the reasons previously discussed, the record establishes that the petitioner has overcome the grounds on which the director denied the Form I-129F. Therefore, the appeal will be sustained and the petition will be approved.

The AAO also notes that the record contains evidence of the beneficiary's withdrawal of her application for admission under the U.S. Visa Waiver program on June 8, 2005, following a determination of her inadmissibility under section 212(a)(7)(A)(i)(I) of the Act. The effect of the beneficiary's prior exclusion from the United States on her admissibility under section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), is beyond the scope of this proceeding. It may, however, be considered in the consular interview prior to visa issuance.

¹ Information provided by Federal Republic of Germany consular services indicates that marriage in Germany may only be contracted before a registrar. *See* www.germany.info/relaunch/info/consular_services.

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 met that burden.

ORDER: The appeal is dismissed. The petition is approved.