



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUL 26 2006

IN RE:

Petitioner:

Beneficiary:

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, 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 dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Germany, as the fiancée of a U.S. 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 beneficiary was no longer a fiancée of a U.S. citizen, as required by § 214(d) of the Act. Specifically, the petitioner and beneficiary were already married at the time the petition was filed. On appeal, the petitioner states that Citizenship and Immigration Services (CIS) personnel telephonically instructed him to file a Form I-129F Petition for Alien Fiancée. The petitioner does not indicate when he was told to file the Form I-129F.

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 and beneficiary were married in Las Vegas on May 6, 2005, and the petitioner filed the Form I-129F on December 28, 2005. 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.

Because the petitioner and beneficiary are already married, 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 upon approval of a Form I-130 petition.

ORDER: The appeal is dismissed and the application is denied.