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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:



Office: VERMONT SERVICE CENTER

Date: JUN 28 2006

EAC 04 110 52356

IN RE:

Petitioner:



Beneficiary:

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 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, Vermont 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 Nigeria, 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 record did not establish the petitioner as a U.S. citizen at the time of filing and, therefore, eligible to file a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the beneficiary. *Decision of the Director*, dated June 28, 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 petitioner filed the Form I-129F with Citizenship and Immigration Services on March 4, 2004 but failed to submit proof of his U.S. citizenship. In his denial, the director noted that CIS records indicated that the petitioner did not become a U.S. citizen until October 1, 2004, seven months after he filed the instant petition. On appeal, the petitioner states that he was not aware that he had to be a U.S. citizen to file the Form I-129F on behalf of the beneficiary, but that he now meets that requirement. As proof, the petitioner submits a copy of the face page of his U.S. passport and a copy of his certificate of naturalization issued on October 1, 2004.

While the AAO notes that the petitioner is now a U.S. citizen, eligibility for a benefit must be established at the time an application or petition is filed. A visa petition may not be approved at a later date based on a set of facts not present at the time of filing. *See* 8 C.F.R. § 103.2(b)(12). As the petitioner was not a U.S. citizen on the date of filing, he was not eligible to file the Form I-129F on the beneficiary's behalf. Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification only to aliens who are the fiancé(e)s of U.S. citizens. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. As he is now a U.S. citizen, the petitioner may file a new Form I-129F petition on the beneficiary's behalf. The AAO notes that any new Form I-129F must, again, be filed within two years of a meeting between the petitioner and beneficiary, as required by the meeting requirement of section 214(d) of the Act.

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 not met that burden.

ORDER: The appeal is dismissed.