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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 04 252 51680

Office: VERMONT SERVICE CENTER

Date: **JUN 29 2006**

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 Iran, as the fiancé 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 that the petitioner's previous marriage had been legally terminated at the time the petition was filed. *Decision of the Director*, dated May 24, 2005.

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.

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. . . .

To establish eligibility under section 214(d) of the Act, a petitioner must be legally able to enter into marriage at the time he or she files the Form I-129F. It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed.

In his denial, the director indicated that he did not find the petitioner's translated birth certificate, which included the date of her divorce from her previous spouse, to be sufficient proof that she was unmarried at the time of filing.

On appeal, the petitioner submits notarized copies of a translated remarriage permit and another birth certificate issued by the Interests Section of the Islamic Republic of Iran in Washington, D.C. The birth certificate, which provides information on her marital status, identifies her previous spouse and indicates that she was divorced from him on October 22, 1985. The remarriage permit references the information included in the petitioner's birth certificate and declares that she is unmarried and may marry without impediment. The AAO finds the birth certificates and remarriage permit issued by the Iranian Interests Section to be sufficient proof of the termination

of the beneficiary's prior marriage. Therefore, she has established that on the date of filing, September 24, 2004, she was no longer married to her previous spouse and was legally able to marry the beneficiary.

The petition may not be approved, however, as the record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act, 8 U.S.C. § 1184(d). As discussed above, a petitioner must establish that he or she and the beneficiary have met at least once during the two-year period immediately preceding the filing of the Form I-129F. As the instant petition was filed on September 24, 2004, the petitioner is, therefore, required to prove that she and the beneficiary met during the period beginning on September 24, 2002 and ending on September 24, 2004.

At the time of filing, the petitioner indicated that she and the beneficiary had met in June 2004, a date within the specified period. The record, however, contains no evidence to support the petitioner's claim, e.g., copies of pages from the petitioner's passport showing her June 2004 entry to Iran, copies of airline ticket receipts or boarding passes establishing her air travel to Iran during June 2004, film-dated photographs showing the petitioner and beneficiary together during this time period. Accordingly, the petitioner has not demonstrated compliance with the meeting requirement of section 214(d) of the Act. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, although the petitioner has overcome the grounds on which the director based his decision, the AAO will not disturb the director's denial of the petition.

The AAO notes that the basis for its decision differs from that relied upon by the director. However, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd* 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. The petition is denied.