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U.S. Citizenship
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DC

FILE: [REDACTED]
EAC 05 072 52768

Office: VERMONT SERVICE CENTER

Date: OCT 17

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Cameroon 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 failed to establish that he and the beneficiary had personally met within the two-year period preceding the filing of the petition, as required by section 214(d) of the Act. He also found that the petitioner had failed to establish that he was divorced from his previous wife and free to marry the beneficiary. *Decision of the Director*, dated June 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.

Although the AAO finds the director to have appropriately denied the instant Form I-129F, the petitioner has notified the AAO that subsequent to the filing of the appeal, he has married the beneficiary. On October 12, 2006, the petitioner submitted a copy of a marriage certificate that establishes he married the beneficiary on May 19, 2006. In that the petitioner, on appeal, had submitted a copy of his May 30, 2003 divorce decree from his previous wife, the AAO finds the petitioner to have entered into a legal marriage with the beneficiary. Accordingly, the issues on which the director based his denial are now moot and the AAO turns, instead, to whether the beneficiary may still benefit from the Form I-129F filed prior to her marriage 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) 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.

As indicated above, section 101(a)(15)(k)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(k)(ii), may benefit 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

Clarification of the statutory language is found at 8 C.F.R. § 214.2(k)(7), which 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....

However, at the time the Form I-129F was filed, January 13, 2005, the petitioner and beneficiary were not yet married. Accordingly, the petitioner was not eligible to file a Form I-130 visa petition on the beneficiary's behalf prior to filing the Form I-129F and she cannot, therefore, benefit from the instant petition. The appeal will be dismissed.

The denial of the petition is without prejudice. Once the petitioner submits a Form I-130 on behalf of his wife, he may file a new I-129F petition on her behalf in accordance with statutory requirements. The petitioner need only file the Form I-130 prior to submitting a new Form I-129F. He does not have to wait for its approval.

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.