

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

D6

PUBLIC COPY



FILE: [REDACTED]
EAC 06 190 53766

Office: VERMONT SERVICE CENTER

Date: DEC 27 2007

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.

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 Haiti, as the fiancé(e) 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 as the petitioner and beneficiary married after the filing of the petition, the beneficiary could not be classified as a fiancée for immigration purposes. *Decision of the Director*, dated March 21, 2007.

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 filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services (CIS) on June 7, 2006. On June 22, 2006, the director sent a request for further evidence to the petitioner. The petitioner responded to this request and states that he and the beneficiary had been married in Haiti on September 13, 2006. *Petitioner's Letter*, dated September 27, 2006.

Discussion of how a spouse may come to the United States under section 101(a)(15)(K)(ii) of the Act 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....

The petitioner has indicated that he and the beneficiary were married on September 13, 2006 after his submission of the instant Form I-129F. Therefore, he cannot establish that his spouse was the beneficiary of a pending or approved Form I-130 at the time he filed the Form I-129F, as required for admission to the United States under section 101(a)(15)(K)(ii) of the Act.

If the petitioner wishes to submit a new Form I-129F for the beneficiary, he must *first* file a Form I-130 immigrant visa petition on her behalf. To prove that he has complied with the requirement of filing a Form I-130, the petitioner should, at the time of filing the new Form I-129F, submit proof of the Form I-130 filing, e.g., the fee receipt issued by CIS.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.