

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

36

FILE:

[REDACTED]
WAC 06 188 51581

Office: CALIFORNIA SERVICE CENTER

Date: JUN 05 2007

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.

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, 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 Laos, 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 established that the petitioner and beneficiary had entered into a marriage before filing the fiancé(e) petition. *Decision of the Director*, dated November 30, 2006.

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. . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on May 24, 2006. At the time of filing, the petitioner indicated on the Form I-129F that he and the beneficiary were single. On appeal, the petitioner states that he and the beneficiary have not yet entered into a marriage. However, the Marriage Certificate, dated August 28, 2006, indicates that the petitioner and beneficiary entered into a marriage before the issuance of a visa. The Marriage Certificate states the following:

The Lao People Democracy Unity Prosperity marriage certification is ruled in as the following statutory: statutory rule 2, section 9; statutory rule 3, section 11; and statutory 2, section 12, the wedding.

The parents of the bride has agreed the marriage of the bride and groom on this date of March 14, 2006, the bride's name is . . .

The parents of the groom has agreed to the marriage of the groom . . .

In this Marriage Certificate, we agreed that our marriage is a traditional marriage and has sworn under oath in accordance to the marriage statutory rules, in which is outlined as following:

1. Both agreed to be married as husband and wife.
2. The marriage under takes the form of a traditional marriage.
3. The parents of both the bride and groom have agreed to the marriage of the two.

It is noted that the documents from Lao government officials have been translated into English.

Because the petitioner and beneficiary entered into a marriage before the issuance of a visa, the petitioner fails to establish eligibility under section 101(a)(15)(K)(i) of the Act, 8 U.S.C. § 1101(a)(15)(K)(i).

The AAO notes that the beneficiary *may* be eligible to apply for classification as a K-3 nonimmigrant. The regulation at 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 proper filing of a new Form I-129F petition on behalf of the beneficiary.

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.