



U.S. Citizenship
and Immigration
Services

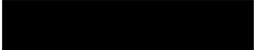
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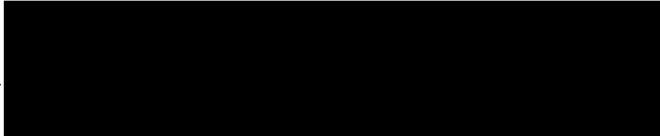
Office: VERMONT SERVICE CENTER

Date: **MAR 30 2007**

EAC05 185 52613

IN RE:

Petitioner:
Beneficiary



PETITION: Petition for Alien Fiancé(e) Pursuant to § 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 of the Administrative Appeals Office 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 citizen of the United States who seeks to classify the beneficiary, a native and citizen of Pakistan, as the fiancé of a United States citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry. . . .

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 . . . [emphasis added].

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. The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on June 16, 2005. The director denied the petition after determining that the petitioner had not submitted proof of the legal termination of her prior marriage.

On appeal, the petitioner states that her previous husband died during the civil war in Afghanistan in 1985, and that she is unable to obtain a death certificate because no such records are kept in Afghanistan. *Form I-290B*. Included with her appeal, the petitioner submits a copy of an emailed letter from the U.S. consulate in Afghanistan and an affidavit she wrote. The letter from the U.S. consulate in Afghanistan states that the current Government of Afghanistan has continued the practice of past governments and does not issue death or birth certificates as a matter of course. *Letter from Consular Section, Embassy of the United States of America, Kabul, Afghanistan*, dated December 30, 2005. There is a particular lack of information for the period during the war against Soviet forces and civil war (1978-1992). *Id.* There is no way to verify the death of someone killed during these wars except for the word of their relatives and/or acquaintances. *Id.* Documentation of birth or death can often be obtained, retroactively, by relatives visiting the appropriate Government office and providing witnesses. *Id.* This method is far from reliable. *Id.*

The record fails to include documentation of the death of the petitioner's prior husband from a government office or documentation showing that an attempt was made to obtain a government-issued death certificate. Apart from the affidavit sworn by the petitioner herself, the petitioner has submitted no other evidence to establish her husband's 1985 death. When evidence does not exist or is unavailable, the regulation at 8 C.F.R. § 103.2(b)(2)(i) requires the following:

If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Based on the information provided by the consular section at the U.S. Embassy in Kabul, the AAO acknowledges that the petitioner is unable to obtain an official death certificate to document her prior husband's death in Afghanistan. However, the petitioner's affidavit attesting to that death does not satisfy the regulatory requirements just noted. A petitioner who must rely on sworn testimony in the absence of required documentation must submit at least two sworn statements from individuals who are not parties to the petition and who have direct personal knowledge of the event to which they attest. In the instant case, the record contains only one affidavit sworn by an individual who is also the petitioner. Therefore, it does not demonstrate that the petitioner's prior husband died in 1985.

The petitioner has not established that her marriage in Afghanistan has been terminated, and has thus not established that she was legally free to marry at the time her Form I-129F was filed. Accordingly, the appeal will be dismissed.

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.