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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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DC

[Redacted]

FILE:

[Redacted]
WAC 06 172 51917

Office: CALIFORNIA SERVICE CENTER

Date:

OCT 29 2007

IN RE:

Petitioner:

Beneficiary:

[Redacted]

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:

[Redacted]

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, California 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 bring the beneficiary, a native and citizen of Pakistan, to the 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).

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. . . .

The record reflects that the petitioner, in response to the director's request for evidence, submitted a marriage certificate documenting his marriage to the beneficiary on March 19, 2006. As the beneficiary was married to the petitioner at the time of filing, the director determined that she was not a fiancée and, therefore, was ineligible for benefits under section 101(a)(15)(K) of the Act.

However, 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) has 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.

An alien spouse may benefit from a Form I-129F if he or she meets the requirements of section 101(a)(15)(K)(ii) of the Act:

(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

The regulation at 8 C.F.R. § 214.2(k)(7) also provides that:

To be classified as a K-3 spouse as 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

A check of relevant CIS databases indicates that on May 11, 2006, the petitioner filed the Form I-130 on behalf of his wife. Accordingly, at the time he submitted the Form I-129F on June 16, 2006, the petitioner's spouse was the beneficiary of a pending Form I-130, as required by section 101(a)(15)(K)(ii) of the Act. However, the record indicates that the Form I-130 benefiting the petitioner's spouse was denied by the director on November 17, 2006. *Decision of the Director*, dated November 17, 2006. Therefore, at the time

the director issued his decision regarding the Form I-129F, the beneficiary was no longer the beneficiary of a Form I-130 and eligible for classification as a K-3 spouse. Accordingly, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.