



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

AUG 05 2008

EAC 07 189 51065

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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Haiti, as the fiancée 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 20, 2007. The director denied the petition after determining that the petitioner had only submitted an English translation of his Haitian divorce decree. The director also stated that the applicant had failed to submit an extract or "extrait" of the divorce decree from the National Archives of Haiti. The director concluded that the petitioner had not established that he was legally free to marry the beneficiary at the time the petition was filed. *Director's Decision*, dated December 13, 2007.

The Foreign Affairs Manual of the Department of State provides guidance on obtaining and authenticating documents from foreign countries. The Foreign Affairs Manual states that in Haiti certain civil records, including divorce decrees, are available in two forms. The manual states:

At the time of registration, a hand-written certificate on official, stamped paper is issued by the registrar of the section in which registration takes place. The record is also entered into an official register, which is transferred to the National Archives in Port-au-Prince, usually after one year. Once this transfer occurs, a transcript of the record, known as an extrait, can be obtained from the National Archives. Official, double-folded, stamped paper first must be obtained from the Bureau de Contributions for a fee. The National Archives prepares requested extraits on the official paper according to the fees specified below. The interested party must have an original certificate or must know the year and place of registry. An extrait usually takes three days to process. Same day service is available for an additional fee.

In regards to divorce decrees, the Foreign Affairs Manual states that for divorces involving Haitian citizens, extracts can be obtained from the National Archives as specified above. The Foreign Affairs Manual also

states that original certificates are extremely difficult to verify. When there is doubt about the identity or the relationship in question, an extract should be requested as well as secondary evidence. The AAO notes that in a Request for Evidence, dated November 20, 2007, the director informed the petitioner that all birth, marriage and divorce certificates from Haiti have to be extracts from the National Archives of Haiti, issued on or after July 12, 1983 and that an English-language translation must accompany each extract. The director noted that the petitioner's divorce decree was not a National Archives extract.

On appeal, the petitioner submits a copy of his original divorce decree from a Haitian court with an English translation. The petitioner also submits a letter from the Vice-Consul at the US Embassy in Port-au-Prince Haiti certifying that the individual who signed and sealed the divorce decree was the Civil Registrar of the South-East Section of Port-au-Prince. *Letter from Vice Consul*, dated September 27, 2001.

The AAO notes that in failing to submit an extract from the National Archives, the petitioner has not shown that he was legally free to marry the beneficiary at the time the petition was filed. Therefore, the appeal will be dismissed.

The AAO notes that the petitioner submits a wedding photo of himself and the beneficiary and states that he and the beneficiary were married in a church ceremony in Haiti. *Petitioner's Statement*, November 28, 2007. However, the AAO finds that the record does not establish that the petitioner and beneficiary are married because it does not contain an extract of their marriage certificate from the National Archives in Haiti.

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 an individual to benefit from a Form I-129F fiancé(e) petition if he or she:

(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....

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....

Although the beneficiary cannot benefit from the current petition, the petitioner can submit a new Form I-129F for a spouse if he first files an Alien Relative Petition (Form I-130) on the spouse's behalf. A Form I-129F submitted on behalf of a spouse must be supported by the National Archives extracts of the petitioner's divorce and marriage certificates and the filing receipt from the Form I-130.

The denial of this petition is without prejudice. Once the petitioner files a Form I-130 for his wife, he may file a new I-129F petition on her behalf in accordance with the statutory requirements.

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. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.