

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D6



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 11 2008

MSC 07 128 22700

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, 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 classify the beneficiary, a native and citizen of Romania 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

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on February 5, 2007. 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.

In the present case, the director determined that the petitioner had not submitted documentary evidence to establish that he and the beneficiary were legally free to marry at the time the petition was filed. The director denied the petition accordingly. *Director's Decision*, dated May 29, 2007.

On appeal, the petitioner asserts that he is not able to provide a marriage certificate because he and the beneficiary are not married. He also states that he has been unable to file an Alien Relative Petition (Form I-130). *Petitioner's Statement*, dated June 8, 2007.

The AAO notes that as the petitioner and beneficiary are not married, there is no need to submit a Form I-130 or a marriage certificate. However, on his Form I-129, the petitioner indicated that he was previously married on two occasions and the beneficiary was also previously married on two occasions. He has not provided the divorce decrees terminating these marriages, as requested by the director on April 19, 2007.

In that the petitioner has failed to submit divorce decrees for his and the beneficiary's previous marriages, he has not demonstrated that he and the beneficiary were legally able to marry on the date he filed the Form I-129F. Additionally, the AAO notes that the petitioner has not submitted documentation showing that he and the beneficiary met during the two-year time period immediately preceding the filing of the petition. Although the petitioner indicates that he and the beneficiary met in Utah in 2006, his statement alone is insufficient proof that he has complied with the meeting requirement of section 214(d) of the Act. Going on record without supporting documentation is not sufficient to meet the petitioner's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the appeal will be dismissed.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. The petitioner may file a new I-129F petition on the beneficiary's 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.

ORDER: The appeal is dismissed.