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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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[REDACTED]

FILE: [REDACTED]
EAC 07 204 51397

Office: VERMONT SERVICE CENTER

Date: **JUL 25 2008**

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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 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 the matter is now before the Administrative Appeals Office (AAO) on appeal. 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 Nigeria, as the fiancé 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 petitioner had failed to provide any initial evidence or documentation in support of the petition, as required by regulation. *Decision of the Director*, dated December 19, 2007.

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. . . .

On appeal, the petitioner submits documentation to support the Form I-129F, Petition for Alien Fiancé(e), she filed on July 9, 2007, including a copy of her birth certificate, copies of pages from her U.S. passport showing her travel to Nigeria during 2006-2007, passport-style photographs of herself and the beneficiary, and Form G-325As for herself and the beneficiary, although the Form G-325A submitted for the beneficiary is not signed. The AAO finds, however, that the petitioner has failed to submit proof that her marriage to her first husband, Henry Ekunwe, was terminated in 2002, as she claims.

The AAO notes that the regulation at 8 C.F.R. § 103.2(a) states in pertinent part:

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the

form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) further states:

If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence of for ineligibility

In that the instructions in Part 5D of the Form I-129F require a petitioner to submit proof of the legal termination of any prior marriages, the petitioner has failed to comply with the requirements for filing the Form I-129F and the appeal will be dismissed. The denial of the petition is, however, without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf in compliance with statutory and regulatory 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.