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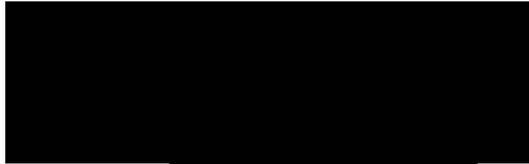
U.S. Department of Homeland Security  
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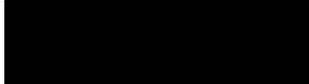
U.S. Citizenship  
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FILE:



Office: VERMONT SERVICE CENTER

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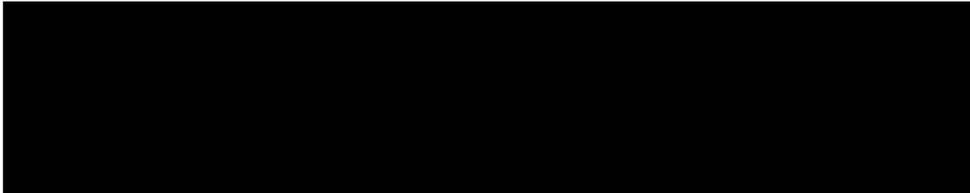
Petitioner:

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:



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 of the Ukraine and a citizen of Russia, 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 (CIS) on January 3, 2007. At that time, the beneficiary indicated that she had three previous spouses named [REDACTED], [REDACTED], and [REDACTED] and submitted divorce certificates for each prior marriage. The names listed on the divorce certificates are [REDACTED] and [REDACTED]. On January 17, 2007 CIS issued a request for evidence to document that [REDACTED], [REDACTED], and [REDACTED] are the same person. CIS also requested proof of the legal termination of the marriage of the petitioner to his previous spouse. While the petitioner submitted a divorce certificate for himself and his previous spouse, the Director determined that he had failed to submit additional documentation showing that [REDACTED] is the same person as [REDACTED] and [REDACTED]. The Director denied the petition because the petitioner had failed to submit documentary evidence that the beneficiary was legally free to marry him at the time the petition was filed. *Decision of the Director*, dated March 15, 2007.

On appeal, counsel submits a brief on behalf of the petitioner clarifying that the beneficiary's third husband's name was "[REDACTED]" and not "[REDACTED]." See *attorney's brief*. Counsel further states that the beneficiary used the names [REDACTED] and [REDACTED] during her three previous marriages, thus asserting that all three names belong to the same individual. *Id.* Counsel notes that after the beneficiary's divorce from [REDACTED], she used the name [REDACTED] and after her divorce from both [REDACTED] and from [REDACTED], she used the name [REDACTED]. *Id.*

The AAO notes that the record includes documentation to support that [REDACTED] is the same person as [REDACTED] (see *divorce certificate*, dated 1972) and that [REDACTED] is the same person as [REDACTED] see [REDACTED]

*Form I-129F; Form G-325A, Biographic Information sheet, for the beneficiary listing other names used*). Therefore, the record establishes that [REDACTED] and [REDACTED] are the same person. While [REDACTED] states that she was married to [REDACTED] (see *Form I-129F, Form G-325A, Biographic Information sheet, for the beneficiary*), the divorce certificate included in the record makes no mention of what name [REDACTED] assumed after her divorce from [REDACTED]. See *divorce certificate*, dated 1998. In his brief, counsel asserts that [REDACTED] used the name [REDACTED] after her divorce from [REDACTED]; however, there are no documents in the record to support such assertions. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As the record fails to include this documentary evidence, the AAO finds that the petitioner has not demonstrated that the beneficiary was legally free to marry at the time he filed the petition. Therefore, the appeal will be dismissed.

The denial of this petition is without prejudice. The petitioner may file a new Form 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.