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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 06 2004

WAC 01 123 51283

IN RE: Petitioner: [redacted]
Beneficiary

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, California Service Center. The petition was subsequently revoked by the director. The petition 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 and citizen of the Philippines, as the fiancée 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 not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. *Decision of the Director*, dated October 25, 2002.

Section 101(a)(15)(K) of 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. . . .

In response to the director's notice of intent to deny, the petitioner failed to submit evidence of the termination of the marriage between the beneficiary and her previous spouse.

On appeal, the petitioner submits a letter, dated November 6, 2002 and a copy of the petitioner's marriage contract.

The submitted copy of the marriage contract indicates that the previous marriage of the beneficiary was declared null and void in the Regional Trial Court for the National Capital Judicial Region on March 17, 2000. The beneficiary, therefore, was legally able to conclude a valid marriage at the time of the filing of the Form I-129F, Petition for Alien Fiancé(e), on March 7, 2001. The AAO notes that additional dates, occurring after the filing of the Form I-129F petition, also appear on the marriage contract, however, these dates appear to be noted for procedural purposes. Further, the petitioner submits an additional court document in regard to the beneficiary's declaration of nullity of marriage that also reflects March 17, 2000 as the date of termination.

In addition to the grounds for denial of the Form I-129F identified by the director, the AAO finds that the record is inconclusive as to whether the petitioner was legally able to conclude a valid marriage at the time of the filing of the Form I-129F petition. The record contains an incomplete copy of the petition for divorce filed by the previous spouse of the petitioner. The petition for divorce was filed on October 20, 2000, but the AAO notes that the two pages provided do not reflect the date that the marriage was legally terminated. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director did not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp.2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

The petitioner has not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 214(d) of the Act. Therefore, the appeal will be dismissed.

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

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.

ORDER: The appeal is dismissed.