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U.S. Citizenship and Immigration Services

[redacted]

D6

JUN 25 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 02 238 52294

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 denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed and the original petition will be declared moot.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Brazil, 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 failed to establish that he was unmarried at the time of the filing of the petition. *Decision of the Director*, dated March 6, 2003.

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. . . .

The petitioner filed the original Petition for Alien Fiancé(e) (Form I-129F) with the Immigration and Naturalization Service [now Citizenship and Immigration Services] on July 12, 2002 (EAC-02-238-52294). On appeal, the record contains a copy of an additional Form I-129F petition filed on September 10, 2003 (EAC-03-250-53717) and approved by the Director, Vermont Service Center, on February 20, 2004. As the petitioner has obtained an approved Form I-129F petition on behalf of the beneficiary, the appeal will be dismissed and the original petition declared moot.

ORDER: The appeal is dismissed and the original petition is declared moot.