

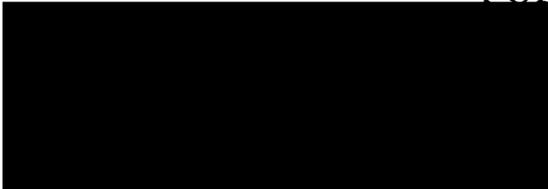
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

DEC 13 2007

EAC 07 001 50920

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, Vermont 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 Nigeria, 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 on September 29, 2006. On November 1, 2006, the Director requested additional documentation showing the final divorce decree from the petitioner's previous marriage. In response to the director's request for documentation, the petitioner submitted a statement from [REDACTED] stating that she and the petitioner were never married. *Statement from* [REDACTED] dated March 30, 2004. The director denied the petition, noting that Citizenship and Immigration Services records contained the petitioner's December 4, 1997 marriage certificate and an approved Petition for an Alien Relative (Form I-130) on behalf of the petitioner's spouse. Accordingly, the director found that the petitioner had failed to submit documentary evidence to establish that he was legally free to marry the beneficiary at the time the petition was filed.

On appeal, the petitioner asserts that he was married to [REDACTED] but that the marriage was annulled by [REDACTED]'s family due to traditional reasons. *Form I-290B*, dated April 9, 2007. The AAO notes that the petitioner requests 90 days to submit additional documentation. It has been more than 90 days since the petitioner's appeal was filed and no additional documentation has been received by the AAO. Thus, the record will be considered complete. As the petitioner has not submitted documentation to establish that his marriage had been annulled at the time he filed the Form I-129F, he has not shown that he was legally free to marry the petitioner at the time the petition was filed. 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.