



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

P/6



FILE: [REDACTED]
MSC 07 079 20734

Office: CALIFORNIA SERVICE CENTER

Date: JAN 11 2008

IN RE: Petitioner:
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 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, California 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 Ethiopia, 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 was not a U.S. citizen at the time of filing. *Decision of the Director*, dated July 27, 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.

The petitioner filed the Form I-129F on December 18, 2006. At the time of filing the petitioner was not a U.S. citizen, but a pending applicant for naturalization. On appeal, the petitioner submits her naturalization certificate showing that she became a U.S. citizen on July 13, 2007. Section 101(a)(15)(K)(i) of the Act provides nonimmigrant classification only to aliens who are the fiancé(e)s of U.S. citizens. Accordingly, as the petitioner was not a citizen of the United States at the time of filing, she was not eligible to file the Form I-129F on behalf of the beneficiary. Therefore, the appeal will be dismissed and the petition will be denied.

The denial of the petition is without prejudice. As the petitioner is now a U.S. citizen, she may file a new I-129F petition on the beneficiary's behalf in accordance with 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.