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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **OCT 22 2010**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 Cambodia, as the fiancé(e) 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).

The director denied the nonimmigrant visa petition because the petitioner had failed to establish that he and the beneficiary were free to marry at the time the petition was filed, as he did not submit evidence that the marriage reflected on his Certificate of Naturalization was legally terminated and that the beneficiary's marriage to Sokheng Tang was legally terminated. On appeal, the petitioner states that he will obtain documents from his attorney for submission as soon as he collects them and that he has requested a revised Certificate of Final Judgment for the beneficiary. As supporting documentation, the petitioner submits copies of the previously submitted Certificate of Final Judgment and translation for the beneficiary.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

Subject to subsections (d) and (p) of section 214, an alien who -

(i) 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 admission.

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), states in pertinent part that a fiancé(e) petition:

[S]hall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 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

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on December 23, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between December 23, 2007 and December 23, 2009.

When he filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner stated, in part, that he knew the beneficiary through his friend.

On March 15, 2010, the director issued a request for evidence (RFE), requesting that the petitioner submit evidence that he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The director also requested proof of the legal termination of the petitioner's marriage(s) and the beneficiary's marriage to [REDACTED]

In his May 27, 2010 response to the director's RFE, the petitioner stated, in part, that he visited the beneficiary in Cambodia on September 22, 2008, and again on April 3, 2009, and that on May 25, 2009, they had an engagement party. As supporting documentation, the petitioner submitted: copies of the pages from his U.S. passport; a Certificate of Final Judgment, and translation, for the beneficiary; a letter dated July 18, 2008, from the Deputy State Registrar of the Division of Vital Records from the [REDACTED] Department of Health, certifying that no marriage record was found for the petitioner; and photographs.

The director denied the petition because the petitioner failed to establish that he was free to marry the beneficiary at the time the petition was filed, as he had not demonstrated that the marriage reflected on his Certificate of Naturalization was legally terminated. The director also found the Certificate of Final Judgment for the beneficiary insufficient evidence that her marriage to [REDACTED] was legally terminated because it did not identify the parties involved in the civil judgment or indicate that the judgment pertained to the dissolution of the beneficiary's marriage to [REDACTED].

On appeal, the petitioner states that he will obtain documents from his attorney for submission as soon as he collects them, and that he has requested a revised Certificate of Final Judgment for the beneficiary.

The petition is not approvable. The AAO acknowledges the petitioner's assertion that he will obtain documents from his attorney to submit as soon as he collects them and that he has requested a revised Certificate of Final Judgment for the beneficiary. Going on record without supporting documentary evidence, however, is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Failure to submit requested evidence

that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this matter, the petitioner has not submitted the requested evidence. Thus, the petitioner has not demonstrated that at the time the petition was filed, he and the beneficiary were free to marry. Thus, the petition may not be approved. Accordingly, the appeal is dismissed. The petition must be denied.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, he should consult the instructions to the Form I-129F to understand the specific documents that he should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his home.

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. The petition is denied.