

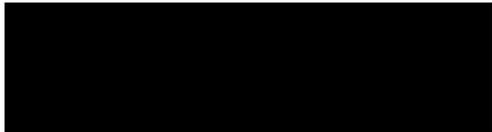
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

PUBLIC COPY



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FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date:

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

JAN 07 2011

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, with a fee of \$630. 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 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 Cuba, as the spouse of a United States citizen pursuant to § 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(ii).

The director denied the petition because the petitioner failed to submit any initial evidence or supporting documentation. On appeal, the petitioner submits: a marriage certificate showing that she and the beneficiary were married on July 17, 2008, in Camaguey, Cuba; envelopes mailed to her from the beneficiary; and photographs.

The record contains evidence that the petitioner and the beneficiary are married. The Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) has amended the language of section 101(a)(15)(K) of the Act to allow an individual to benefit from a Form I-129F fiancé(e) petition if he or she:

(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....

8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(K)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(K)(ii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F....

There is no evidence in the record that a Form I-130 visa petition was filed by the petitioner on behalf of her husband prior to her submission of the Form I-129F, nor has a check of USCIS databases indicated that this is the case. The petitioner also has not submitted the following: proof of her U.S. citizenship; proof of the legal termination of all prior marriages for herself and the beneficiary; passport-style, color photographs for herself and the beneficiary; and G-325A, Biographic Information forms for herself and the beneficiary. As a result, the beneficiary cannot benefit from the instant petition. Therefore, the appeal is dismissed.

The denial of this petition is without prejudice. Once the petitioner files a Form I-130 for her husband, she may file a new I-129F petition on his behalf in accordance with the statutory requirements.

Page 3

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.