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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D6

DATE: JUL 0 6 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

[redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 service center director (the director) denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a citizen of Laos, as the fiancé(e) 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 on the basis of his determination that the petitioner had failed to establish she was unmarried at the time she filed the petition. On appeal, counsel submits a brief.

Applicable Law

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

> subject to subsections (d) and (p) of section 214, [is] 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 that a fiancé(e) petition shall only be approved after satisfactory evidence is submitted to establish that both parties are legally able to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or the petitioner does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a Petition for Alien Fiancé(e) (Form I-129F), including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.[1]

Pertinent Facts and Procedural History

The petitioner filed the instant petition on June 2, 2011. The director issued a subsequent request for additional evidence (RFE), and the petitioner filed a timely response. After considering the evidence of record, including the petitioner's response to her RFE, the director denied the petition on February 4, 2012.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the

[1] The *Instructions* to the Form I-129F may be found online at the USCIS website at http://www.uscis.gov/files/form/i-129finstr.pdf (last accessed June 22, 2012).

director's ground for denying this petition. Beyond the decision of the director, we find additionally that the record lacks required initial evidence.

The Petitioner Has Not Demonstrated That She is Legally Free to Marry the Beneficiary

The petitioner provided her marital status on the Form I-129F as "divorced" and claimed that her first marriage, to N-V-,[2] ended on September 27, 2001. On the Form G-325A, Biographic Information, she claimed that she married N-V- "in the camp [in] Thailand" on February 28, 1987, and that their marriage was terminated on September 27, 2001 in Green Bay, Wisconsin. Her Certificate of Naturalization, which was issued on May 16, 2007, provides her marital status as "MARRIED."

Although the record contains a "Separation Agreement" signed by the petitioner and N-V- on September 15, 2001 and filed with the Brown County, Wisconsin Clerk of Courts on September 27, 2001, the director noted in her November 2, 2011 RFE that this document was not signed by a judge. As such, the director requested, *inter alia*, that the petitioner submit a finalized divorce decree issued by the judge or magistrate that terminated the marriage between the petitioner and N-V-.

In the January 4, 2012 affidavit she submitted in response to the director's RFE, the petitioner claimed that she and N-V- were never legally married under any recognizable law and that, as such, no divorce decree exists. With regard to the Separation Agreement, she claimed that the agreement was executed only to divide the former couple's assets and assign custody of their children and noted that the agreement stated that the couple never legally married. The director found the petitioner's statement deficient and denied the petition on February 4, 2012.

On appeal, counsel contends that the beneficiary cannot produce evidence that she and N-V- are divorced because they were never married. Counsel argues that the petitioner and N-V- were merely living together as cohabitants and that the separation agreement, which specifically states they were not married, supports that claim. Counsel claims that the petitioner's marriage to N-V- was not valid in Thailand, where it took place, or in Wisconsin, where the couple resided. Counsel claims that when a marriage is legally recognized in the country in which it took place, it is legally recognized in the United States. Counsel argues that the marriage between the petitioner and N-V- was a "cultural marriage" only, that it was never registered in Thailand, and that it was consequently never recognized in the United States. Counsel notes additionally that the State of Wisconsin, where the petitioner and N-V- resided as a couple, does not recognize common law marriages. Finally, counsel claims that N-V- successfully petitioned USCIS to allow his current wife to enter the United States after his separation from the petitioner, and that it would be unfair to not allow the petitioner to do the same.

Counsel's assertions made on appeal do not establish that the petitioner is legally free to marry the beneficiary. First, the petitioner has not explained why her Certificate of Naturalization provides her marital status as divorced, or why she specifically told the director she was married to, and is now divorced from, N-V- on the Forms I-129F and G-325A. Furthermore, in immigration proceedings the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to

[2] Name withheld to protect individual's privacy.

establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). While counsel claims that Thailand does not recognize the petitioner's marriage to N-V-, he does not support his assertion with any evidence regarding Thai law. Nor does the separation agreement establish that the petitioner was not legally married to N-V-. While that agreement does state that the couple never married, we note that it was executed between the petitioner and N-V- alone, and the petitioner has not established that any legal authority reviewed, much less concurred with, that particular provision.

Counsel's assertions regarding N-V-'s purported ability to successfully petition USCIS to allow his current spouse to enter the United States will not be considered. N-V- is not the subject of the instant petition and his USCIS filing history not relevant. However, even if it was relevant, we note that counsel provided no evidence in support of his assertions regarding N-V-'s purported ability to obtain an approved fiancée or alien relative petition (Form I-130) from USCIS. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For all of these reasons, the petitioner has failed to establish that she is legally free to marry the beneficiary as required by section 214(d)(1) of the Act.

Statements From the Petitioner and Beneficiary Regarding Their Intent to Marry Within 90 Days of the Beneficiary's Entry into the United States

Beyond the decision of the director, the petition may not be approved for another reason, as the record lacks original statements from the petitioner[3] and beneficiary regarding their intent to marry each other within 90 days of the beneficiary's entry into the United States. Absent all required initial evidence, the petition cannot be approved.

Conclusion

On appeal, the petitioner has failed to overcome the director's ground for denying the petition and has failed to establish that she is legally free to marry the beneficiary. Beyond the decision of the director, the petitioner has also failed to submit all required initial evidence.[4] Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(K)(i) of the Act and this petition must remain denied.

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[3] Although the petitioner addressed her engagement to the beneficiary in her January 4, 2012 affidavit, she did not specifically state her intent to marry him within 90 days of his entry into the United States. *See Instructions* to the Form I-129F.

[4] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). She has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.