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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

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Date: MAY 01 2012 Office: CALIFORNIA SERVICE CENTER



IN RE:



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:



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.

Thank you,


Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The California Service Center director denied the nonimmigrant petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, 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 pursuant to 8 C.F.R. § 103.2(b)(8)(ii) because the petitioner failed to submit required initial evidence. On appeal, the petitioner submits a statement and additional evidence.

Applicable Law

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:

shall 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, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

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 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.

Factual and Procedural History

The petitioner filed the fiancé(e) petition with USCIS on February 3, 2011 without any supporting evidence. For this reason, the director denied the petition on August 12, 2011. On appeal, the petitioner submitted most of the required initial evidence, but his record still lacked proof of the termination of his and the beneficiary's prior marriages. On March 12, 2012, the AAO issued a Request for Evidence (RFE) to the petitioner for proof of the termination of the petitioner's marriage to B-D-, his first wife and proof of the termination of the beneficiary's marriage to Z-T-, her first

husband.¹ The AAO noted that the petitioner submitted a stipulation and waiver related to a legal action in the Family Law Division of the Superior Court of California, County of Santa Clara, filed by B-D-, but he did not submit a final divorce decree, judgment of annulment, or other evidence of the termination of his marriage. The petitioner submitted the beneficiary's divorce decree, but the document is in Chinese and was not accompanied by a certified English translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). The AAO requested that the petitioner submit evidence of the termination of his prior marriage and a certified translation of the beneficiary's divorce decree to meet the Form I-129F evidentiary requirements. The petitioner timely responded to the RFE with the requested evidence.

Analysis

The petitioner has submitted all of the required initial evidence, including: two (2) passport-style color photographs of the petitioner and the beneficiary; a Form G-325A, Biographic Information, for the petitioner and the beneficiary; original statements from the petitioner and the beneficiary to establish their mutual intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status; the petitioner's U.S. passport containing travel stamps for his visits to China during the two-year period immediately preceding the filing of the petition; copies of photographs of the petitioner and the beneficiary; a judgment of dissolution issued by the Superior Court of California, County of Santa Clara Family Law Division reflecting that the petitioner's marriage to B-D- was terminated on November 15, 2007; and a certified English translation of a mediation agreement from The People's Court of Baoan District, Shenzhen City, China reflecting that the beneficiary was granted an uncontested divorce from Z-T- on October 27, 2003. Now that the petitioner has submitted documentation to meet all of the Form I-129F evidentiary requirements, the AAO will sustain the petitioner's appeal and approve the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.

¹ Names withheld to protect identities.