(b)(6)

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

U.S. Citizenship and Immigration Services

Date: OCT 0 3 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiancée 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 nonimmigrant visa petition because the petitioner failed to establish that he and the beneficiary were legally free to marry when the petition was filed. On appeal, counsel submits a brief 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 Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on August 19, 2011. When he filed the petition, the petitioner indicated that he had one prior marriage and is widowed and that the beneficiary is single and had no prior marriages. The beneficiary also stated on her Biographic Information Sheet (Form G-325A), which was initially submitted with the fiancée petition, that she had no prior marriages. The petitioner submitted as proof that he and the beneficiary are legally free to conclude a valid marriage: a death certificate for his first wife, which listed her date of death as May 21, 2008; and a certification from the

National Statistics Office in the Philippines stating that the beneficiary's name did not appear in the National Indices of Marriages as of database records ending April 30, 2011. In a July 18, 2012 Request for Evidence (RFE), the director informed the petitioner that he must submit documentation to show the termination of the beneficiary's prior marriage - such as a copy of her final divorce decree, an annulment, or a death certificate issued by the civil authorities. In response, the petitioner submitted another certification from the National Statistics Office in the Philippines stating that the beneficiary's name did not appear in the National Indices of Marriages as of database records ending April 30, 2010.

On September 13, 2012, the director determined that the record failed to establish that the beneficiary was free to marry at the time the petition was filed, and denied the petition. On appeal, counsel asserts that the director erroneously concluded that the beneficiary had been previously married and requested evidence that was impossible to produce. Counsel contends that the petitioner submitted a certificate of no marriage record to establish that the beneficiary had never been married. Counsel asserts that the director failed to provide the source of any extraneous information that he relied on to deny the petition. Counsel submits internet print-outs from the Philippines National Statistics Office and the U.S. Department of State, which discuss the certificate of no marriage record (CENOMAR) issued by the National Statistics Office.

Analysis

De novo review of the record shows no error in the director's decision. Section 214(d)(1) of the Act requires the submission of evidence to establish that the petitioner and the beneficiary are "legally able . . . to conclude a valid marriage in the United States. . . ." A marriage will be valid for immigration purposes only where any prior marriage of either party has been legally terminated and both individuals are free to contract a new marriage. *See Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). The petitioner initially submitted with the fiancée petition copies of electronic mail correspondence he had with the beneficiary and his former counsel. The correspondence, which spans the period of February 2011 until March 2011, reveals that the beneficiary was either married, or she had a prior marriage, at the time the fiancée petition was filed. In the correspondence former counsel informed both the petitioner and the beneficiary that the beneficiary must terminate her marriage prior to the filing of the fiancée petition. Former counsel placed the beneficiary in contact with an attorney in the Philippines to assist the beneficiary with obtaining a divorce or annulment. The petitioner replied that the beneficiary consulted with the attorney, and he felt that the process for terminating the beneficiary's marriage would be long and expensive. The correspondence shows that the beneficiary subsequently informed the petitioner that she contacted a friend who is "capable to fix the visa" and her friend "talk[ed] to the bad man if he can give all the supporting docs for me . . . ." The petitioner then contacted former counsel to explain that the beneficiary decided to retain a local divorce attorney in the Philippines who "could get everything removed, like it never happened." The petitioner also initially submitted with the fiancée petition, a copy of the profile the beneficiary placed on the online matchmaking website, . In her profile, the beneficiary stated that she is widowed, which further contradicts her claim of having never married.

The U.S. Department of State visa reciprocity schedule for the Philippines provides that the CENOMAR is issued to individuals who were never married. The two CENOMARs submitted by the petitioner are respectively dated May 17, 2010 and May 16, 2011 and state that the beneficiary does not

appear in the National Indices of Marriages. The certifications provide that they were issued based upon the beneficiary's name, date of birth, place of birth and the names of her parents. The internet print-out counsel provided from the Philippines National Statics Office also states that the verification and issuance of the CENOMAR is based upon this biographical data. The contradictory information in the record, which indicates that the beneficiary was, in fact, married or had a prior marriage at the time the certificates of no marriage were issued, draws into question the validity of the CENOMAR. The petitioner has not submitted any evidence to resolve the inconsistencies in the record surrounding the beneficiary's marital status. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel asserts the director failed to notify the petitioner of extraneous information used to deny the petition. The regulations only require notice of derogatory information unknown to the petitioner. 8 C.F.R. § 103.2(b)(16)(i). In this case, the director did not rely on derogatory information unknown to the petitioner, but on information the petitioner himself submitted, which indicates that the beneficiary was or remains married to another man. As the petitioner has not resolved the inconsistencies in the record, he has not established that the beneficiary is legally able to conclude a valid marriage with him in the United States. Consequently, the beneficiary may not benefit from the instant petition and it must be denied.

The appeal will be dismissed for the above stated reasons. In fiancée visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.