

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**



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**

D4

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

**SEP 14 2009**

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:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom

Acting Chief, Administrative Appeals Office

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

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, 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 petition because the petitioner failed to establish that the beneficiary was free to marry at the time the petition was filed. On appeal, counsel submits a statement indicating that the petitioner was never married to [REDACTED], and thus no certified divorce decree exists. Counsel also asserts that the director is using an incorrect A-number because it is different from the petitioner's.

At the outset, the director assigned the above A-number to the beneficiary. Thus, the A-number reflected on the director's decision is correct.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who 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 entry. . . .

Section 214(d) of the Act, 8 U.S.C. 1184(d), 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 two 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 . . . . [emphasis added]

It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed.

The petition is not approvable. Although the petitioner has established that he is a U.S. citizen and has submitted evidence that he and the beneficiary met in person within the two years immediately preceding the filing of the petition, the petitioner has failed to submit the required initial evidence listed in the instructions to the I-129F Petition and, more importantly, has failed to establish that he and the beneficiary are legally able to conclude a valid marriage. On the I-129F Petition, the petitioner indicated that the beneficiary was previously married to [REDACTED]. The beneficiary's Form G-325A, Biographic Information, also reflects that she was married to [REDACTED]. The petitioner, however, did not submit any documentation of the termination of the beneficiary's prior marriage. Accordingly, in addition to the petitioner's failure to submit the initial evidence listed in the instructions to the I-129F Petition, the AAO cannot find that the beneficiary was able to conclude a valid marriage when the petition was filed. The appeal must, therefore, be dismissed.

Beyond the decision of the director, the petition is also not approvable because the record contains an unexplained discrepancy pertaining to the beneficiary's claimed birth date. Information on the petition reflects that the beneficiary was born on December 10, 1981, while information on the translation of the beneficiary's birth certificate reflects her birth date as January 16, 1981. The record contains no explanation for this inconsistency. 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). For this additional reason, the petition may not be approved.

The denial of the petition is without prejudice to the filing of a new I-129F Petition when the petitioner provides evidence of the beneficiary's divorce, thus demonstrating that she is free to marry. The petitioner must also resolve the inconsistency pertaining to the beneficiary's actual date of birth. Should the petitioner wish to file a new I-129F Petition, the petitioner 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](http://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.