



U.S. Citizenship  
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Services

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DG



FILE: [REDACTED]  
WAC 05 046 50712

Office: CALIFORNIA SERVICE CENTER

Date: NOV 22 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

Robert P. Wiemann, Director  
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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Armenia, 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 petition after determining that the petitioner's previous marriage had not been legally terminated at the time the petition was filed. *Decision of the Director*, dated April 13, 2005.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

(i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;

(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; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), 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 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. . . .

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 petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with the Service on December 3, 2004, indicating that he had previously been married. He did not, however, provide documentary evidence of the termination of this marriage at the time of filing. In response to the director's February 10, 2005 request for evidence, which specifically asked for this documentation, the petitioner stated that his prior marriage was dissolved at the end of 1993 when his wife left him. He indicated that he had no documentation of the termination of his marriage, as he had not filed for divorce in a Russian court. Therefore, the evidence of record does not establish that the petitioner was legally able to marry the beneficiary at the time of filing.

On appeal, the petitioner contends that his marriage ended when he was paroled into the United States in June 1994 and that his U.S. naturalization certificate, which indicates that he is divorced, should be adequate documentation of his marital status. The AAO does not agree. While the petitioner's personal relationship with his wife may have ended when he physically relocated to the United States, there is no evidence in the record to establish that it would have resulted in the legal termination of his marriage under Russian law. Further, his naturalization certificate, while it may describe the petitioner as divorced, does not constitute evidence that his

marriage was legally terminated by the appropriate Russian authorities. It is proof only of his U.S. citizenship. Accordingly, the appeal will be dismissed.

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.