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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]

LIN 05 018 53553

Office: NEBRASKA SERVICE CENTER

Date: JAN 18 2006

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:

EXHIBIT COPY

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. Wjermann

Robert P. Wjermann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Nebraska 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 Indonesia, 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 acting director denied the petition after determining that the record did not contain evidence of the termination of the beneficiary's previous marriage. *Decision of the Acting Director*, dated May 19, 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 October 25, 2004, but did not submit evidence that either his or the beneficiary's previous marriage had been legally terminated. In response to the director's request for evidence, the petitioner submitted a copy of his divorce decree. He did not, however, provide documentation to establish that the beneficiary's marriage had ended with the death of her husband. Accordingly, the director found that the petitioner had failed to establish that he and the beneficiary, at the time of filing, were legally able to enter into a valid marriage, as required by section 214(d) of the Act.

On appeal, the petitioner indicates that he submitted a copy of the death certificate for the beneficiary's former husband subsequent to providing a copy of his divorce decree. However, all evidence submitted in response to a request for evidence must be provided at one time. By initially submitting a copy of his divorce decree, the petitioner initiated the director's adjudication of the Form I-129F. The submission of only some of the requested evidence is considered to be a request for a decision based on the existing record. *See* 8 C.F.R. § 103.2(b)(11). Accordingly, the only evidence considered by the acting director in determining whether the petitioner and

beneficiary were legally able to marry was the copy of the petitioner's divorce decree. In the absence of a death certificate for the beneficiary's previous husband, she correctly concluded that the record did not establish that the beneficiary was legally free to marry the petitioner at the time of filing.

While the petitioner's appeal states that he was unaware that all evidence responding to the director's request for evidence was to be submitted at one time, the copy of the director's request to the petitioner included in the record specifically states this requirement. Therefore, the petitioner was informed that copies of his divorce decree and the death certificate for the beneficiary's husband had to be submitted together.

While the copy of the death certificate submitted by the petitioner would ordinarily be considered by the AAO on appeal, a review of the record finds no evidence that documents the death of the beneficiary's previous husband. The AAO notes that the petitioner states he sent the certificate to the service center on May 12, 2005. However, it is not included in the record. Accordingly, the record does not establish that the beneficiary was legally free to marry the petitioner at the time the Form I-129F was filed. Therefore, the appeal is dismissed.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. The petitioner may file a new I-129F petition on the beneficiary's behalf in accordance with statutory requirements.

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.