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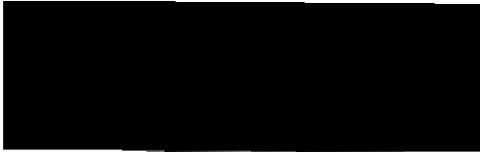
U.S. Department of Homeland Security
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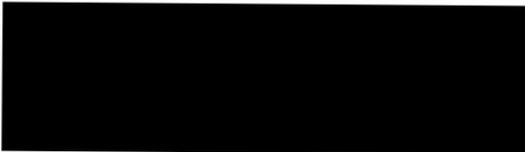
Date: JUN 29 2006

IN RE: Petitioner:
Beneficiary:



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:



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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont 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 Guyana, 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 record did not establish that the petitioner's previous marriages had been legally terminated at the time the petition was filed, leaving him free to marry the beneficiary. *Decision of the Director*, dated May 7, 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 February 13, 2004. At the time of filing, the petitioner indicated he had no previous marriages. However, subsequent to the approval of the petition, a review of CIS records identified two previous spouses for whom the petitioner had filed petitions. CIS reopened the matter and provided the petitioner with an opportunity to provide evidence of the termination of both marriages. The petitioner denied having been married to either individual. In his denial, the director noted that the petitioner's signatures on the Form I-129F and his naturalization application were consistent with the signatures on the marriage certificates submitted in support of prior petitions. Accordingly, the director concluded that the record did not establish that the petitioner was free to marry the beneficiary at the time he filed the Form I-129F on behalf of the beneficiary.

On appeal, counsel for the petitioner states that the petitioner was not married at the time of filing and that supporting evidence will be submitted within 30 days. A subsequent communication from counsel, received July

1, 2005, requests an additional 30 days in which to prove that the petitioner is not married. The record, however, does not contain the additional materials referenced by counsel.

The petitioner has failed to provide evidence to rebut the director's finding that he was not legally free to marry the beneficiary at the time of filing, as required by section 214(d) of the Act, 8 U.S.C. § 1184(d). 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.