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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: DEC 20 2007

WAC 07 133 52298

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, 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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, as the fiancée 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).

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:

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
[emphasis added].

The record reflects that the petitioner filed a Form I-129F, Petition for Alien Fiancé(e) on March 30, 2007. On the Form I-129F, the petitioner indicated that he married the beneficiary on January 7, 2007. The record also includes a copy of the petitioner and beneficiary's marriage certificate registering their marriage in the Book of Marriage on February 12, 2007. *See marriage certificate.* As the beneficiary was married to the petitioner at the time of filing, the Director determined that she was not a fiancée and, therefore, was ineligible for benefits under section 101(a)(15)(K) of the Act.

The Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) has amended the language of section 101(a)(15)(K) of the Act to allow U.S. citizens to file Form I-129F fiancé(e) petitions for their spouses if they have already filed Form I-130 alien relative petitions on their behalf.

An alien spouse may benefit from a Form I-129F if he or she meets the requirements of section 101(a)(15)(K)(ii) of the Act:

(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

The regulation at 8 C.F.R. § 214.2(k)(7) also provides that:

To be classified as a K-3 spouse as defined in section 101(a)(15)(K)(ii) of the Act . . . the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F

There is nothing in the record to indicate that the petitioner filed a Form I-130 on behalf of his wife prior to submitting the Form I-129F. Accordingly, the beneficiary is not eligible for classification as a K-3 spouse. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. If the petitioner wishes to submit a new Form I-129F for the beneficiary, he must first file a Form I-130 immigrant visa petition on her behalf.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.