

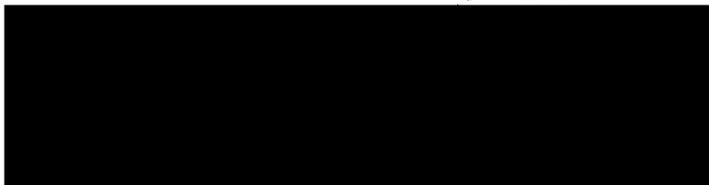
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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
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U.S. Citizenship
and Immigration
Services

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JUN 29 2007

FILE:



EAC 07 029 51238

Office: VERMONT SERVICE CENTER

Date:

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, Vermont 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 Togo, 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). The director denied the petition after determining that the petitioner and the beneficiary may have already been married prior to the filing date, such that the beneficiary could no longer be classified as a fiancée. The director also found that the evidence failed to establish that the petitioner and beneficiary had personally met within the two year period immediately preceding the November 9, 2006 filing date, as required by § 214(d) of the Act.

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. . . .

The evidence shows that the petitioner and beneficiary met between August 7 and September 7, 2004, which occurred prior to the meeting period required by law, beginning on November 9, 2004 and ending on November 9, 2006.

Pursuant to 8 C.F.R. 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish

that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The petitioner does not provide any information on appeal in response to the director's finding that he and the beneficiary had not met within two years prior to filing the fiancée petition. The petitioner also fails to submit evidence on appeal that the meeting requirement would cause him extreme hardship or would violate the beneficiary's customs. Instead, the petitioner submits an explanation regarding the legal significance of their customary marriage ceremony. The petitioner states that he and the beneficiary are not yet legally married, as they did not present their customary engagement documents, including the bride-price attestations, before civil authorities. The AAO acknowledges that according to the petitioner's statements and Togolese law, which requires an appearance before a magistrate in order to obtain state validation of a customary marriage, it appears that the petitioner and beneficiary are not yet legally married. Nevertheless, as the record does not establish compliance with the meeting requirement set forth at § 214(d) of the Act, the petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. *See* §291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

ORDER: The appeal is dismissed and the application is denied.