



U.S. Citizenship
and Immigration
Services

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FILE:



EAC 07 075 51121

Office: VERMONT SERVICE CENTER

Date: JAN 15 2008

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 sustained.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ethiopia, 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 director denied the petition after determining that the petitioner had failed to submit the required Form G-325A, Biographic Information sheet, for the beneficiary or documentary evidence that the beneficiary was legally free to marry the petitioner on January 22, 2007, the date the petition was filed. *Director's Decision*, dated April 13, 2007. 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.

On appeal, the petitioner submits a completed Form G-325A for the beneficiary and a copy of the beneficiary's divorce certificate, showing that her marriage was dissolved on June 2, 2003. Therefore, the beneficiary was legally free to marry the petitioner at the time the petition was filed. The appeal will be sustained.

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 now met that burden.

ORDER: The appeal is sustained.