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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: [Redacted]  
EAC 07 235 52186

Office: VERMONT SERVICE CENTER

Date: JUL 25 2008

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:

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 the matter is now before the Administrative Appeals Office (AAO) on appeal. 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 Haiti, as the fiancé 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 petitioner had failed to provide any initial evidence or documentation in support of the petition, as required by regulation. *Decision of the Director*, dated December 10, 2007.

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, . . .

On appeal, the petitioner submits documentation to support the Form I-129F, Petition for Alien Fiancé(e), she filed on July 26, 2007, including a copy of her Certificate of Naturalization, a statement regarding the circumstances under which she met the beneficiary, Form G-325s, Biographic Information, for herself and the beneficiary, a passport-style photograph of the beneficiary, Haitian birth certificates for herself and the beneficiary, and a copy of the face page from the beneficiary's Haitian passport. Although the petitioner also indicates that she is submitting copies of pages from her passport to establish when she traveled to Haiti, the record before the AAO does not include this evidence.

The AAO notes that, despite the petitioner's submission of the above documentation, the record continues to lack proof that she has complied with the meeting requirement of section 214(d) of the Act or that she is legally able to conclude a marriage with the beneficiary within 90 days of his arrival in the United States. As already noted, the record does not contain copies of pages from the applicant's passport showing travel to Haiti and the AAO finds

no other documentary evidence to establish their meeting. Further, although the applicant indicated on the Form I-129F that she was previously married, she has not submitted proof that her prior marriage has been terminated leaving her free to marry the beneficiary. The AAO also finds that the petitioner has failed to submit a passport-style photograph of herself as required for the filing of the Form I-129F, although she did submit the required photograph for the beneficiary.

The AAO notes that the regulation at 8 C.F.R. § 103.2(a) states in pertinent part:

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) further states:

If all required initial evidence is not submitted with the applicaiotn or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence of for ineligibility . . . .

In that the record lacks the necessary documentation to demonstrate that the petitioner has met the requirements of section 214(d) of the Act, the appeal will be dismissed. Moreover, the petitioner, by failing to submit a passport-style photograph of herself, has not complied with Form I-129F filing instructions. For this reason as well, the appeal will be dismissed.

The denial of the petition is without prejudice, however. The petitioner may file a new Form I-129F petition on the beneficiary's in compliance with statutory and regulatory 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.

JXJ