



U.S. Citizenship
and Immigration
Services

D6

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: DEC 08 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

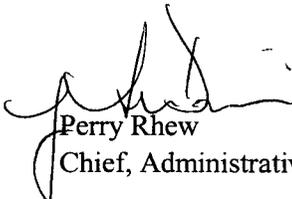
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The petitioner untimely filed an appeal, which the director accepted as a motion to reopen, and ultimately affirmed his previous decision. The petitioner untimely filed a second appeal, which the director again accepted as a motion to reopen, and again affirmed his previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a naturalized U.S. citizen who seeks to classify the beneficiary, a native and citizen of Guyana, as the K-3 spouse of a U.S. citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

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 an individual to benefit from a Form I-129F fiancé(e) petition if he or she:

(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....

Title 8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien 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....

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on March 21, 2008, and indicated that she and the beneficiary were married. The director denied the petition on July 7, 2008 because the petitioner failed to submit any initial evidence or supporting documentation. On November 4, 2008, the director rejected the petitioner's appeal as untimely filed, accepted it as a motion to reopen, and ultimately affirmed his July 7, 2008 decision, as the petitioner had failed to provide additional evidence, including a passport-style, color photograph for herself, G-325A, Biographic Information forms for herself and the beneficiary, and documentary proof of a pending or approved Form I-130, Petition for Alien Relative. On March 16, 2009, the director rejected the petitioner's second appeal as untimely filed, accepted it as a motion to reopen, and again affirmed his previous decision, as the petitioner had failed to provide additional evidence, including G-325A, Biographic Information forms for herself and the beneficiary, and documentary proof of a pending or approved Form I-130, Petition for Alien Relative.

On appeal, the petitioner provides additional evidence, including G-325A, Biographic Information forms for herself and the beneficiary, and documentary proof of a pending or approved Form I-130, Petition for Alien Relative. The petition may not be approved, however, because USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the

petition is filed. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, the petitioner was required to file the Form I-130, Petition for Alien Relative, prior to the March 21, 2008 filing of the instant Form I-129F. In this case, there is no evidence in the record that a Form I-130 visa petition was filed by the petitioner on behalf of her husband prior to her submission of the Form I-129F. Specifically, a check of USCIS databases indicates that the petitioner filed a Form I-130 visa petition on May 10, 2009. As a result, the beneficiary cannot benefit from the instant petition. Therefore, the appeal will be dismissed and the petition will be denied.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, she should ensure that she has submitted all of the required documentary evidence. If necessary, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that she should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or she may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to her home.

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. The petition is denied.