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U.S. Citizenship
and Immigration
Services

86



FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 14 2009**

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.

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).


John F. Grissom, Acting 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 The director's decision will be withdrawn and the matter remanded for further action.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Ukraine, as the fiancé(e) 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 because the petitioner failed to submit the divorce decrees for his two prior marriages. On appeal, the petitioner submits his divorce decrees; however, the petition may not be approved because the record does not contain two passport-style photographs of the petitioner.

The instructions to the I-129F Petition state, at page 3, item #6, that two passport-style photographs must be submitted for both the petitioner and the fiancé(e). When filing the petition, the petitioner did not submit the required photographs. The director, therefore, on February 25, 2008, requested the photographs, among other items. The petitioner submitted some of the items requested by the director, including the two passport-style photographs for the beneficiary, but failed to submit his own passport-style photographs. When denying the petition, the director noted only that the petitioner did not submit the divorce decrees from his two prior marriages; the director failed to mention the absence of the petitioner's two passport-style photographs.

On appeal, the petitioner submits his divorce decrees, the submission of which overcome the director's basis for denying the petition. Nevertheless, the record still does not contain two passport-style photographs of the petitioner. Accordingly, the AAO shall remand the matter to the director so that she can provide the petitioner with an opportunity to submit his two passport-style photographs. The director may request any additional information or evidence that she deems necessary. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn and the matter remanded for issuance of a Request for Evidence (RFE) and entry of a new decision. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.