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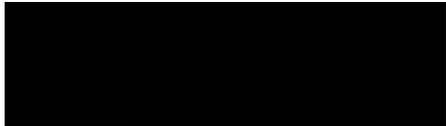
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JAN 14 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)

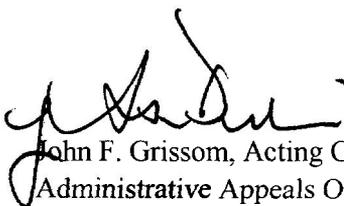
ON BEHALF OF PETITIONER:

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).


John F. Grissom, Acting 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 Chile, 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 initial evidence or supporting documentation. On appeal, the petitioner submits: a copy of an email message between the beneficiary and him; telephone bills showing phone calls to Chile; a copy of the petitioner's U.S. passport showing entrance and exit stamps to and from Chile; a copy of the petitioner's and beneficiary's marriage certificate from their church; an undated photograph of the petitioner and beneficiary that the petitioner states was taken at the airport in Chile; the petitioner's boarding pass for an airline flight to Chile in June 2007; and a DVD with the petitioner's and beneficiary's wedding photographs. The petitioner states on the I-290B form that he and the beneficiary were married in Chile in June 2007 "by church standards" and that the marriage is not legal.

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:

[s]hall 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]

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.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services (USICS) on August 14, 2007. At the time of filing, the petitioner did not submit any supporting documents that are listed in the instructions to the Form I-129F, which include, but are not limited to: proof of the petitioner's U.S. citizenship; a Form G-325A for the petitioner and beneficiary; two passport-style photographs each for the petitioner and beneficiary; original statements from the petitioner and beneficiary or other evidence that establishes their mutual intent to marry within 90 days of the beneficiary's entry into the United States in K-1 status; and evidence of the termination of any prior marriages for the petitioner and beneficiary.

The petition is not approvable. Although the petitioner has established that he is a U.S. citizen and has submitted evidence that he and the beneficiary met in person within the two years immediately preceding the filing of the petition, the petitioner has failed to submit the required initial evidence listed

in the instructions to the I-129F Petition and, more importantly, has failed to establish that he and the beneficiary are legally able to conclude a **valid marriage**. On the I-129F Petition, the petitioner indicated that he was previously married to [REDACTED]. The I-129F Petition also showed that the beneficiary was previously married to [REDACTED]. The petitioner stated on the I-129F Petition that his marriage to [REDACTED] ended on August 14, 1996 and that the beneficiary's marriage to [REDACTED] ended on April 29, 2001; however, the petitioner did not submit any documentation of the termination of either his or the beneficiary's prior marriages. Accordingly, in addition to the petition's failure to submit the initial evidence listed in the instructions to the I-129F Petition, the AAO cannot find that the petitioner or the beneficiary were able to conclude a valid marriage when the petition was filed. The appeal must, therefore, be dismissed.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that he 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 he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his 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.