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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

DG

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 06 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[REDACTED]

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5780 S. UNIVERSITY AVENUE
CHICAGO, ILLINOIS 60637

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 Pakistan, as the fiancé(e) 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 nonimmigrant visa petition because the record contained no evidence that the petitioner and the beneficiary personally met within the two-year period immediately preceding the filing of the petition or that the petitioner qualified for a waiver of that requirement. The director also found that the "bare talaq," a deed of divorce (thrice time), was insufficient evidence that the beneficiary's marriage to [REDACTED] had been legally terminated. On appeal, the petitioner submits the following: a personal affidavit dated April 9, 2010; a divorce certificate from the Union Council Chamad in Pakistan, and translation; photocopies of pages from the petitioner's U.S. passport, reflecting 2008 and 2009 entry/exit stamps from Pakistani airports; copies of photographs; a photocopy of a cash purchase voucher from the Emirates Bank International; photocopies of receipts from jewelry stores in Pakistan; and evidence of the petitioner's overseas travel in December 2008 and January and July 2009.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as, in pertinent part:

Subject to subsections (d) and (p) of section 214, an alien who -

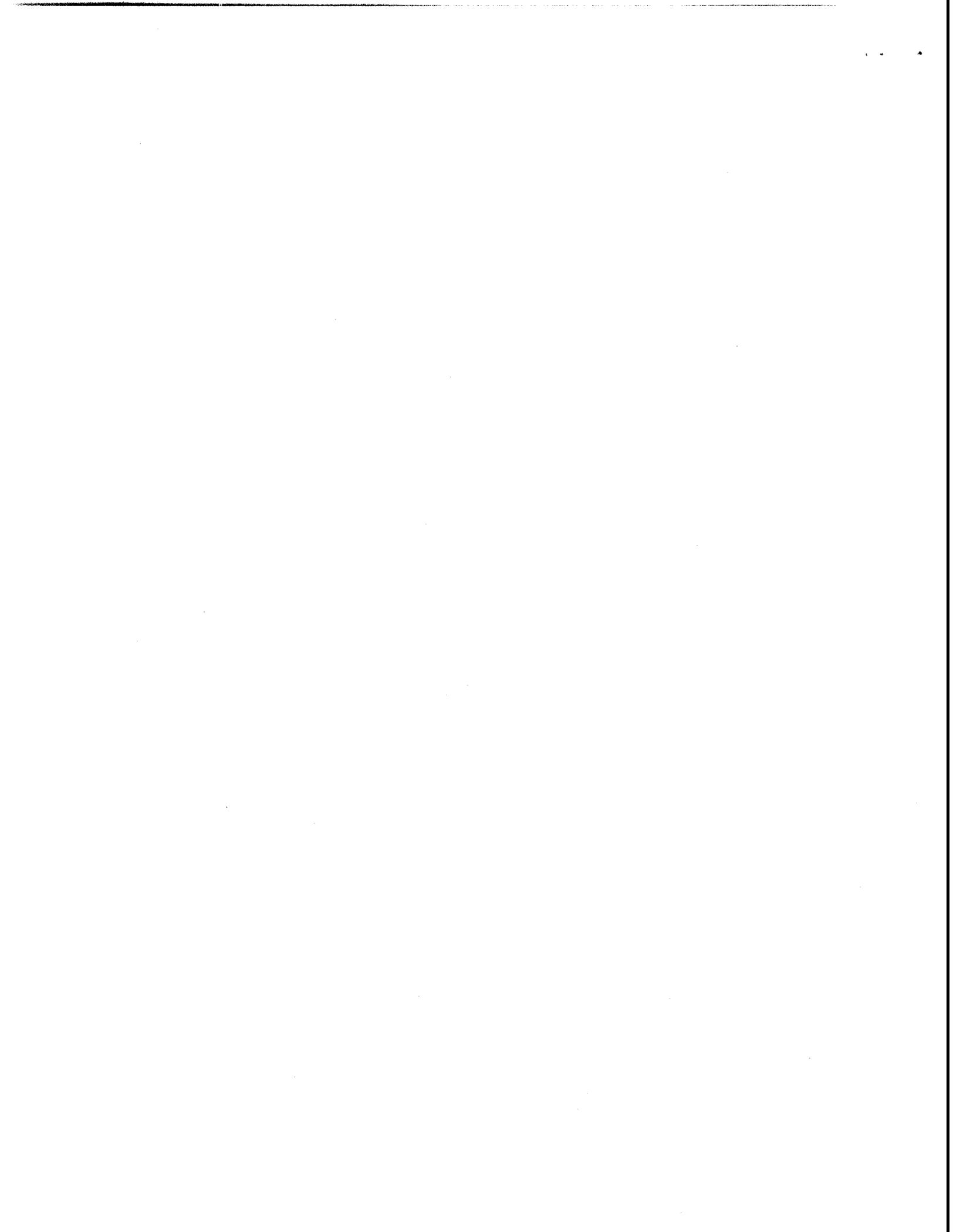
(i) is the fiancée or fiancé of a citizen of the United States . . . and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission.

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), 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 2 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 except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on October 23, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between October 23, 2007 and October 23, 2009.

When she filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether she and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner stated, in part, that she met the beneficiary "during Christmas holiday last year [2008]" in Pakistan, and that she returned to Pakistan in July 2009 to see the beneficiary.



On January 14, 2010, the director issued a request for evidence (RFE) of final divorce/death decrees issued by the civil authorities, with English translations, if applicable, showing that the petitioner's marriage to [REDACTED] was legally terminated, and that the beneficiary's marriage to [REDACTED] was legally terminated.

In her February 2, 2010 response to the director's RFE, the petitioner submitted evidence from the Superior Court of California, County of Solano, of the judgment of dissolution of her marriage to [REDACTED] dated August 5, 2009.¹ The petitioner also submitted a copy of the previously submitted "Deed of Divorce" (thrice time) pertaining to the marriage of the beneficiary and [REDACTED]

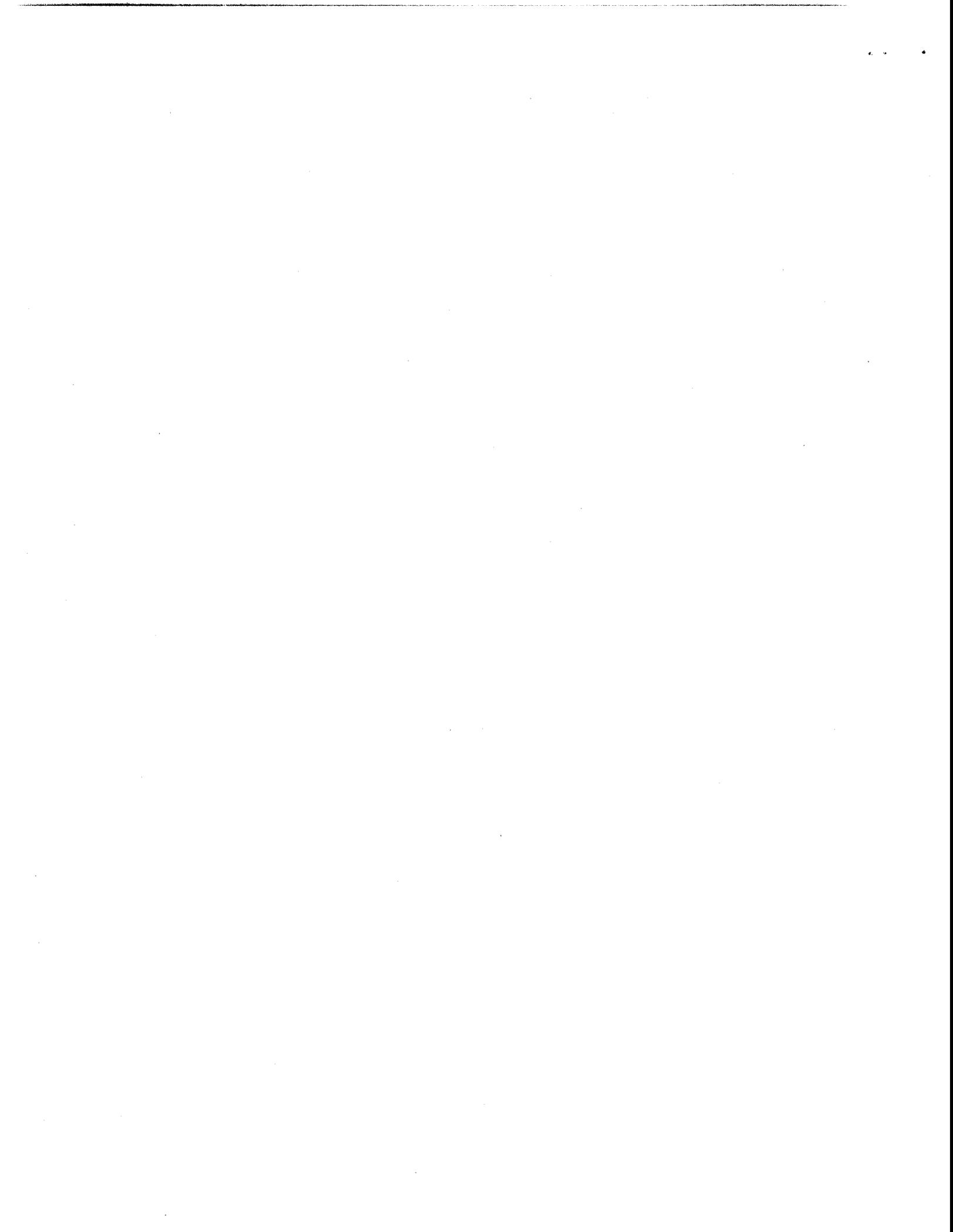
The director denied the petition because the petitioner failed to establish that she and the beneficiary had met, as required under section 214(d)(1) of the Act, or that she qualified for an exemption from this meeting requirement, pursuant to 8 C.F.R. § 214.2(k)(2). The director also found that the "bare talaq," a deed of divorce (thrice time), was insufficient evidence that the beneficiary's marriage to [REDACTED] had been legally terminated.

On appeal, the petitioner explains that she met and was engaged to the beneficiary in Pakistan in December 2008, and that she saw him again in July of 2009, in Dubai and in Pakistan. She submits supporting documentation related to these trips, including previously submitted photocopies of pages from her U.S. passport with corresponding entry/exit stamps from Pakistani airports. The petitioner, therefore, has demonstrated that she and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition, and has overcome this ground for denial.

The petition may not be approved, however, because the petitioner has still not established the beneficiary's legal and actual ability to enter into a valid marriage with the petitioner upon his arrival in the United States, as required by section 214(d)(1) of the Act. In response to the director's RFE, which specifically requested a divorce decree from the civil authorities pertaining to the beneficiary's divorce from [REDACTED] the petitioner resubmitted the "bare talaq," a deed of divorce (thrice time), but did not submit the requested final divorce decree from the civil authorities. The petitioner submits the divorce certificate from the Union Council Chamad in Pakistan for the first time on appeal. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, she should have submitted the document in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the divorce certificate submitted on appeal.

The petitioner has failed to establish the beneficiary's ability to conclude a valid marriage with the petitioner upon his arrival in the United States, as required by section 214(d)(1) of the Act.

¹ Case Number [REDACTED]



Consequently, the appeal will be dismissed. This decision is issued without prejudice. Should the petitioner wish to file a new I-129F Petition, she 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.

