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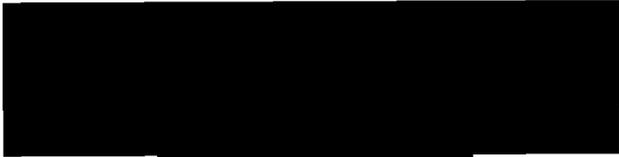
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



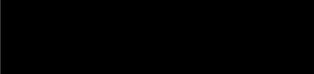
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 03 2010

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).

Perry Rhew
Chief, Administrative Appeals Office

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 Cambodia, as the fiancé(e) 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).

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

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:

[S]hall 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

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on January 20, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between January 20, 2007 and January 20, 2009.

On March 21, 2009, the director issued a Request for Evidence (RFE), requesting proof of the required meeting between the petitioner and the beneficiary, a copy of the final divorce decree that terminated the petitioner's marriage to [REDACTED], and passport-style photographs of the petitioner. In response to the RFE, the petitioner failed to submit the requested final divorce decree for his prior marriage. The director denied the petition because the record contained insufficient evidence of the termination of the petitioner's prior marriage and thus the petitioner failed to demonstrate that he and the beneficiary were legally free to enter into a valid marriage. On appeal, the petitioner states that he now understands that he should have filed the Form I-130, Petition for Alien Relative, prior to filing the I-129F, Petition for Alien Fiancé(e), and that the certified copy of his divorce decree may have been filed with the I-130 petition. As supporting documentation, the petitioner submits a certified copy of the divorce decree for his prior marriage and copies of documentation previously submitted.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

In response to the RFE, the petitioner submitted an "Acceptance of Service" from the Superior Court of Arizona in Maricopa County, but did not submit the requested final divorce decree for his prior marriage. Therefore, because the petitioner failed to demonstrate that he was legally free to marry the beneficiary at the time the petition was filed, the appeal will be dismissed.

It is also noted that, even though the petitioner asserts on appeal that he originally applied for a K-3 visa on behalf of the beneficiary, he filed the I-130 petition on behalf of the beneficiary on March 30, 2009, subsequent to his filing of the I-129F petition on January 20, 2009. The regulations at 8 C.F.R. § 214.2(k)(7) require that an I-130 petition be approved prior to the proper filing of an I-129F petition on behalf of the beneficiary. Moreover, a review of USCIS records finds that the I-130 petition filed by the petitioner on behalf of the beneficiary was denied on August 25, 2009, because the petitioner failed to submit sufficient evidence that he and the beneficiary were legally married.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, he 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.