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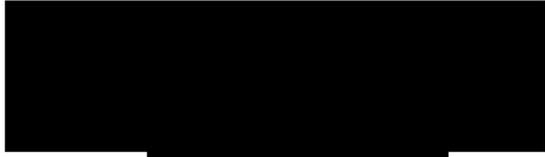
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

D6



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 20 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)

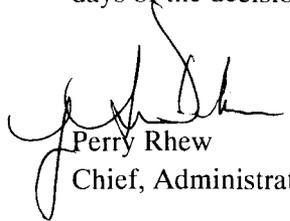
ON BEHALF OF PETITIONER:



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 nonimmigrant visa petition was approved by the Director, California Service Center on January 3, 2007. Based upon information obtained from the beneficiary during her visa issuance process at the American Embassy in Port-au-Prince, Haiti, that she and the petitioner had married on July 3, 2007, the director determined that the beneficiary was not eligible for the benefit sought. On June 2, 2009, the director issued a Notice of Intent to Deny (NOID), and on July 27, 2009, the director denied the petition. 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 Haiti, 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).

Section 101(a)(15)(K) of the *Immigration and Nationality Act (the Act)*, 8 U.S.C. § 1101(a)(15)(K) provides that subject to subsections (d) and (p) of section 214, nonimmigrant classification may be provided to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (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; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

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. . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on August 25, 2006. It was approved by the director on January 3, 2007, but returned to USCIS from the American Embassy in Port-au-Prince, Haiti on April 3, 2008. The Department of State officer who conducted the beneficiary's visa interview determined that the beneficiary was not eligible to receive a fiancée visa because she and the petitioner were already married. This conclusion was based on a certificate of civil marriage reflecting that the petitioner and the beneficiary were married on July 3, 2007.

On June 2, 2009, the director issued a NOID, requiring the petitioner to submit evidence within 30 days to offer evidence in opposition to the NOID. The petitioner responded to the director's request on June

12, 2009, submitting a marriage certificate for him and the beneficiary, documentation related to their child, and a bank letter.

On July 27, 2009, the director denied the Form I-129, stating the petitioner's evidence did not overcome the basis of the NOID.

On appeal, the petitioner provides a bank letter, insurance information, a property deed, and a pay stub. The evidence presented by the petitioner, however, does not establish eligibility for nonimmigrant benefits under § 101(a)(15)(K) of the Act, which are limited to a fiancé(e) of a U.S. citizen. Accordingly, the appeal is dismissed. The petition must be denied.

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 AAO notes that the beneficiary may be eligible to apply for classification as a K-3 nonimmigrant. If the beneficiary seeks to be classified as a K-3 nonimmigrant, the regulations at 8 C.F.R. § 214.2(k)(7) require that a Form I-130, Petition for Alien Relative, be approved prior to the proper filing of a Form I-129F petition on behalf of the beneficiary.

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.