

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

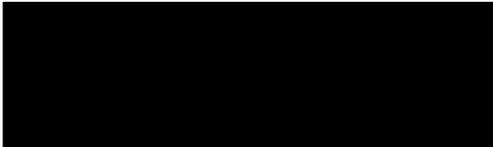
PUBLIC COPY

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:



Office: CALIFORNIA SERVICE CENTER

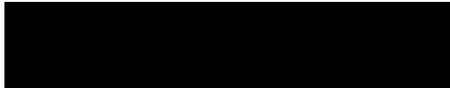
Date:

FEB 26 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 citizen of the United States who seeks to classify the beneficiary, a native and citizen of Haiti, 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 nonimmigrant visa petition because the record contained no evidence of the termination of the petitioner's marriage to [REDACTED] and thus the petitioner failed to demonstrate that he and the beneficiary were legally free to enter into a marriage. On appeal, the petitioner states that his divorce from [REDACTED] will soon be final. As supporting documentation, the petitioner submits the Petition for Dissolution of Marriage filed on September 21, 2009, with the Contra Costa County Superior Court of California.

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 February 2, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between February 2, 2007 and February 2, 2009.

On August 31, 2009, the director issued a request for evidence (RFE), requesting that the petitioner submit evidence of the legal termination of his marriage to [REDACTED]

In his September 29, 2009 response to the director's RFE, the petitioner stated that his marriage to [REDACTED] was supposed to have been annulled in 2006, but, as he was unable to obtain the related documentation, he filed for a divorce on September 19, 2009 at the superior court in Martinez, California.

The director denied the nonimmigrant visa petition because the petitioner failed to demonstrate that he and the beneficiary were legally free to enter into a marriage.

On appeal, the petitioner states that his divorce from [REDACTED] will soon be final.

The petition is not approvable. The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on February 2, 2009. At the time of filing and as of this date, the beneficiary remains married to his spouse, [REDACTED]. The AAO acknowledges the petitioner's statements regarding his difficulty in obtaining a divorce from his spouse; nevertheless, the petitioner was not legally free to conclude a valid marriage with the beneficiary when the petition was filed. It is the date of filing the petition that controls here. It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and the beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. In addition, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. 8 C.F.R. 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Accordingly, the AAO cannot find that the petitioner was legally able to conclude a valid marriage with the beneficiary when the petition was filed. Accordingly, the appeal is dismissed. The petition must be denied.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, he should ensure that he submits all of the required supporting documentation. If necessary, 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.