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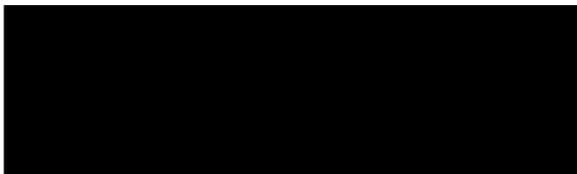
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



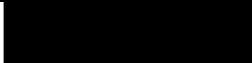
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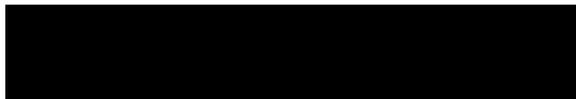
Office: VERMONT SERVICE CENTER

Date: JAN 22 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, Vermont 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 England, 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 insufficient evidence of the termination of the petitioner's prior marriages and thus the petitioner failed to demonstrate that she and the beneficiary were legally free to enter into a marriage. On appeal, the petitioner states that she did not understand the requirement to submit divorce decrees for both of her prior marriages, and indicates that she is now submitting additional "divorce papers and paperwork."

At the outset, it is noted that, even though the petitioner asserts on appeal that she is submitting additional "divorce papers and paperwork," the record as it is presently constituted does not contain a divorce decree to show that her marriage to [REDACTED] was legally terminated. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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).

In addition, even if the petitioner had submitted evidence on appeal to show that her marriage to [REDACTED] was legally terminated, the regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence (RFE) 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 Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in her response to the director's June 22, 2009 RFE. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be adjudicated based on the record of proceeding before the director.

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 17, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between February 17, 2007 and February 17, 2009.

On June 22, 2009, the director issued an RFE, requesting that the petitioner submit: evidence that she and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition; proof of the legal termination of her and the beneficiary's marriages; a passport-style photograph of herself; and properly completed and signed G-325A, Biographic Information, forms for herself and the beneficiary.

In her July 20, 2009 response to the director's RFE, the petitioner submitted part of the requested documentation, but failed to submit evidence that her marriage to [REDACTED] was legally terminated.

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

As discussed above, the petitioner states on appeal that she did not understand the requirement to submit divorce decrees for both of her prior marriages, and indicates that she is submitting additional "divorce papers and paperwork." Again, the record as it is presently constituted does not contain a divorce decree to show that her marriage to [REDACTED] was legally terminated.

The petition is not approvable. The petitioner has failed to submit all of the required initial evidence listed in the instructions to the I-129F Petition. Specifically, the record does not contain a divorce decree to show that the petitioner's marriage to [REDACTED] was legally terminated. Accordingly, the AAO cannot find that the petitioner and the beneficiary are legally able to conclude a valid marriage in the United States. The appeal must, therefore, be dismissed.

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.