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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 22 2011**

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:

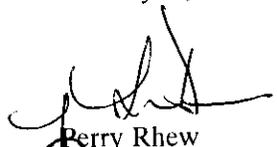
SELF-REPRESENTED

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 \$630. 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,


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 the Philippines, 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 petitioner failed to submit the following: G-325A, Biographic Information forms for himself and the beneficiary; passport photos for himself and the beneficiary; evidence of the termination of all prior marriages for himself and the beneficiary; and evidence that he and the beneficiary personally met within the two-year period immediately preceding the filing of the petition. On appeal the petitioner stated that he was still in the process of obtaining the divorce decree from the Court Document Order System in Los Angeles, California, in regards to his second wife, [REDACTED]. The petitioner also stated that he had planned to travel to the Philippines in November 2010, in order to marry the beneficiary. The petitioner submitted the following additional documentation: evidence of the beneficiary's marriage to [REDACTED] on June 21, 1980; evidence of the death of the beneficiary's former husband, [REDACTED] on February 12, 1990; a petition for dissolution of the petitioner's marriage to [REDACTED], signed by the petitioner on March 4, 1983; a copy of the dissolution of the petitioner's marriage to [REDACTED], filed on December 23, 1988; a judgment and decree of divorce terminating the petitioner's marriage to [REDACTED], filed on August 24, 2007; passport photos for himself and the beneficiary; and a completed current version of the I-129 petition. On January 27, 2011, the California Service Center received the following additional documentation from the petitioner: a marriage certificate showing that the petitioner and the beneficiary were married in the Philippines on December 16, 2010; an "affidavit in lieu of certificate of legal capacity to contract marriage for American citizens," signed by the petitioner on November 18, 2010; a certificate of baptism for the beneficiary; a completed I-130, *Petition for Alien Relative*, signed by the petitioner on March 6, 2010; and evidence that the same I-130 petition was rejected by the California Service Center on May 4, 2010, as improperly filed.

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 April 30, 2010. Therefore, the petitioner and the beneficiary were required to have met in person between April 30, 2008 and April 30, 2010.

When he filed the petition, the petitioner responded "No" to question #18 on the I-129F Petition that asks whether he 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 he met the beneficiary through an international marriage broker that is no longer in business, and that he and the beneficiary communicate daily via computer.

On July 14, 2010, the director issued a Request for Evidence (RFE), requesting that the petitioner submit the following evidence: G-325A, Biographic Information forms for himself and the beneficiary; passport photos for himself and the beneficiary; evidence of the termination of all prior marriages for himself and the beneficiary; and evidence that he and the beneficiary personally met within the two-year period immediately preceding the filing of the petition or that he qualified for a waiver of that requirement. The director also advised the petitioner to submit additional documentation in accordance with the requirements of the International Marriage Broker Regulation Act (IMBRA) of 2005, Pub. L. No. 109-162, dated January 5, 2006.

In his response to the director's RFE, the petitioner submitted a request for an extension to submit the requested evidence.

The director denied the nonimmigrant visa petition because the petitioner failed to submit any of the requested evidence.

The record contains evidence that the petitioner and the beneficiary are married. The Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) has amended the language of section 101(a)(15)(K) of the Act to allow an individual to benefit from a Form I-129F fiancé(e) petition if he or she:

(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....

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....

There is no evidence in the record that a Form I-130 visa petition was filed by the petitioner on behalf of his wife prior to his submission of the Form I-129F, nor has a check of USCIS databases indicated that this is the case. As a result, the beneficiary cannot benefit from the instant petition. Therefore, the appeal is 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.