

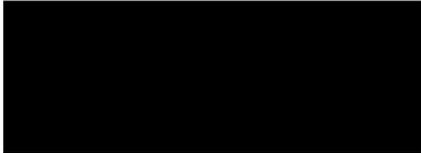
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAR 22 2011

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:



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.

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 sustained. The petition will be approved.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Iran, 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).

At the outset, it is noted that another nonimmigrant visa petition filed by the petitioner on behalf of the beneficiary was initially approved on February 26, 2008. On October 4, 2010, the petition was returned from the U.S. Consular Officer in Ankara, Turkey, as the petitioner and the beneficiary were married in Iran on September 16, 2002. The U.S. Consular Officer noted that the petitioner and his second wife, Lilis Sobariah, were still married in 2002, and they were divorced on February 23, 2005. On December 1, 2010, the director terminated all action on the petition pursuant to 8 C.F.R. § 214.2(k)(5), as the period of validity of the petition had expired and the petition would not be revalidated.

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 director denied the instant nonimmigrant visa petition because the petitioner was already married to the beneficiary at the time the petition was filed on April 9, 2010. On appeal, counsel asserts that the petitioner's marriage to the beneficiary is not legally valid because at the time he married the beneficiary, he was still married to someone else. As supporting evidence, counsel submits a copy of a court decision and copies of documentation previously submitted.

The director's decision will be withdrawn. The Board of Immigration Appeals (BIA) held in *Matter of H*, 9 I&N Dec. 640 (BIA 1962) that even if a marriage is valid where it occurred, if it is contrary to U.S. public policy then it will not be recognized for immigration purposes.

In this matter, the record contains a marriage certificate showing that the petitioner and the beneficiary were married on September 16, 2002, in Iran, while the petitioner was still married to Lilis Sobariah. Thus, the petitioner's marriage to the beneficiary was a bigamous marriage. In accordance with *Matter of H*, 9 I&N Dec. 640 (BIA 1962), the petitioner's bigamous marriage to the

beneficiary goes against U.S. policy and therefore is not recognized for U.S. immigration purposes. Thus, the petitioner's marriage to the beneficiary is not legally valid, and he has overcome the basis for the director's denial of the instant petition.

A review of the record finds that the petitioner has submitted all of the required documentation, as described in the instructions to the I-129F petition. Accordingly, the AAO will sustain the petitioner's appeal and approve the petition.

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 sustained that burden.

ORDER: The appeal is sustained. The denial is withdrawn. The petition is approved.