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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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DATE: **MAR 09 2012** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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,

Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director (the director) denied the nonimmigrant visa petition and 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 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 petition because the petitioner failed to demonstrate that she was unmarried at the time she filed the petition. On appeal, the petitioner submits additional evidence and a statement made on the Form I-290B, Notice of Appeal or Motion.

#### *Applicable Law*

A “fiancé(e)” is defined at section 101(a)(15)(K) of the Act as someone who:

subject to subsections (d) and (p) of section 214, [is] 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:

shall 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, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or the petitioner does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a Petition for Alien Fiancé(e) (Form I-129F), including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.<sup>1</sup>

#### *Pertinent Facts and Procedural History*

The petitioner filed the instant petition on March 4, 2011. The director issued a subsequent request for additional evidence (RFE), and the petitioner submitted a timely response. After considering the

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<sup>1</sup> The *Instructions* to the Form I-129F may be found online at the USCIS website at <http://www.uscis.gov/files/form/i-129finstr.pdf> (accessed March 1, 2012).

evidence of record, including the petitioner's response to his request for additional evidence, the director denied the petition on September 7, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition. Beyond the decision of the director, we find additionally that the record lacks required initial evidence.

*The Petitioner Was Already Married When She Filed The Petition*

The petitioner marked her marital status as "single" on the Form I-129F and provided the names of two prior husbands. She indicated further on the Form G-325A, Biographic Information, that she had only two prior marriages. In his May 20, 2011 RFE, the director instructed the petitioner to submit proof that all prior marriages were lawfully terminated. In response, the petitioner submitted proof that the two marriages she claimed on the Forms I-129F and G-325A were lawfully terminated. However, U.S. Citizenship and Immigration Services (USCIS) records indicated that the petitioner was married to at least two other individuals in addition to the two the petitioner named on the Forms I-129F and G-325A: P-V-<sup>2</sup> and J-C-<sup>3</sup>. As the petitioner did not submit evidence to establish that either of those marriages was lawfully terminated, the director found that she had failed to establish that she was unmarried at the time she filed the instant petition.

On appeal, the petitioner claims that although she filed for a fiancé visa on behalf of P-V-, and that he entered the United States with the visa on September 9, 2001, he returned to Haiti two days later and they never married. The record establishes to our satisfaction that the petitioner was not married to him at the time the instant petition was filed.

However, the record does not establish that the petitioner was no longer married to J-C- when she filed the instant petition. On appeal, the petitioner submits evidence indicating she hired an attorney to file for a divorce from J-C- on November 9, 2010 and that their divorce was granted on June 16, 2011. However, the petitioner must establish her eligibility for the benefit sought as of the date she filed the petition. *See* 8 C.F.R. § 103.2(b)(1). Although the petitioner claims on appeal that she did not fully understand the questions asked on the Form I-129F, she nonetheless remained legally married to J-C- on the date she filed the petition and the beneficiary was consequently ineligible for classification as her fiancé on that date. Therefore, the petition may not be approved.

*The Petitioner and Beneficiary's Intent to Marry*

Beyond the decision of the director, the petition may not be approved for another reason, as the record lacks original statements from the petitioner and the beneficiary regarding the couple's mutual intent to marry within 90 days of the beneficiary's arrival in the United States. Absent all required initial evidence, the petition cannot be approved.

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<sup>2</sup> Name withheld to protect individual's identity.

<sup>3</sup> Name withheld to protect individual's identity.

*Conclusion*

On appeal, the petitioner has failed to overcome the director's ground for denial of the petition and has not established that she was legally able to conclude a valid marriage with the beneficiary when she filed the petition. Beyond the decision of the director, the petitioner has also failed to submit all required initial evidence.<sup>4</sup> Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(K)(i) of the Act and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). She has not met her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).