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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

Date: NOV 05 2013

Office: CALIFORNIA SERVICE CENTER

File: [REDACTED]

IN RE:

Petitioner:

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:

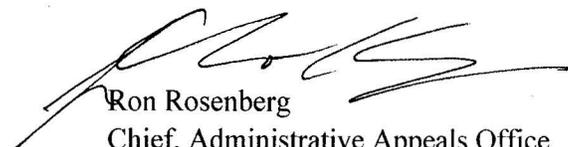
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (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 petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and a citizen of Pakistan, as the fiancé of a United States citizen pursuant to section 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 petitioner failed to establish that she was legally free to marry the beneficiary at the time the petition was filed. On appeal, the petitioner submits a statement and additional evidence.

Applicable Law

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:

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. . . .

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on October 1, 2012. With the Form I-129F, the petitioner included an addendum stating that she was previously married but that the marriage ended on March 26, 2011 in Pakistan. As evidence of the divorce, the petitioner submitted a declaration in Urdu with English translation, titled "Divorce Deed." The document was signed by the petitioner's former husband who indicated that he married the petitioner on December 20, 2010 and was divorced from her as of March 26, 2011, the date of the Divorce Deed.

On May 7, 2013, the director issued a request for evidence (RFE) to the petitioner, requesting her to provide additional evidence of the termination of her prior marriage because the submitted Divorce Deed did not demonstrate that the divorce had been registered, as required, with the proper authority such as the municipality or union council where the divorce took place. In response to the RFE, the petitioner submitted a certified English translation of the previously submitted Divorce Deed but did not

submit any evidence of its registration as requested by USCIS. On June 25, 2013, the director determined that the petitioner did not submit sufficient proof of the termination of her prior marriage and therefore failed to establish that she was free to enter into a valid marriage with the beneficiary at the time the Form I-129F was filed.

Analysis

On appeal, the petitioner submits a Divorce Certificate issued by the Union Council of the Government of Punjab, Pakistan for her and her prior husband which states the "Date of Effectiveness of Divorce" as February 4, 2013. The petitioner also submits a letter explaining that she believed that she had been divorced since 2011 and only recently discovered that their divorce was incomplete for failure to register with the [REDACTED] and that the divorce is now official as of February 4, 2013. The petitioner was therefore not free to enter into a valid marriage with the beneficiary at the time of filing the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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, 249 (Reg. Comm'r. 1978) (citing *Matter of Katigbak*, 19 I&N Dec. 45 (Reg. Comm'r. 1971)).

Conclusion

The petitioner failed to establish that she was legally free to marry the beneficiary at the time the petition was filed. Consequently, the beneficiary may not benefit from the instant petition and it must remain denied. The appeal is, therefore, dismissed. However, the denial of this petition is without prejudice to the filing of a new petition now that the petitioner has finalized her divorce.

In fiancé visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. sec 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.