



U.S. Citizenship
and Immigration
Services

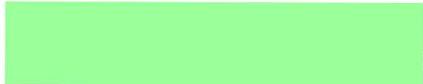
(b)(6)



Date: **MAR 19 2014** Office: CALIFORNIA SERVICE CENTER



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:

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 petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ethiopia, as the fiancée 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 after determining that the petitioner failed to submit documentary evidence that he was legally free to marry the beneficiary at the time the petition was filed.

On appeal, the petitioner provides a statement and additional evidence.

Applicable Law

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who 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 entry. . . .

Section 214(d) of the Act, 8 U.S.C. § 1184(d), 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 two 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 . . . [emphasis added].

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 April 2, 2013. The director denied the Petition for Alien Fiancé(e) (Form I-129F) because the petitioner failed to submit documentary evidence that he was legally free to marry the beneficiary when he filed the Form I-129F. In the appeal notice and the letter dated January 17, 2014, the petitioner states that he did not know that his first marriage should have been terminated prior to filing the Form I-129F. The beneficiary submits evidence that his first marriage was dissolved on May 12, 2013.

Analysis

The petitioner states that he did not know that he was required to have terminated his first marriage prior to filing the Form I-129F. The specific requirements for filing the Form I-129F, including a description of the required initial evidence are in the *Instructions* to the Form I-129F. The Form I-129F specifically states that if the petitioner or beneficiary was married before, evidence that all

prior marriages have been terminated must be submitted. Both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972). In this case, the evidence presented by the petitioner does not demonstrate that he was legally free to marry the beneficiary at the time the petition was filed. The evidence of the beneficiary's divorce would be relevant to any new fiancé(e) petition that the petitioner may file for the beneficiary in the future.

Conclusion

The petitioner failed to submit documentary evidence that he was legally free to marry the beneficiary at the time the petition was filed. Consequently, the instant petition must remain denied and the appeal is dismissed. The denial of this petition is without prejudice to the filing of a new petition on the beneficiary's behalf in accordance with the statutory requirements. 8 C.F.R. § 214.2(k)(2).

In fiancé(e) 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. § 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.