



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-M-B-

DATE: AUG. 12, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary as her fiancé. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). A U.S. citizen may petition to bring a fiancé(e) (and that person's children) to the United States in K nonimmigrant classification for marriage. The U.S. citizen must establish that the parties have previously met in person within two years before the date of filing the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) 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 90 days of the beneficiary's admission as a K nonimmigrant.

The Director, California Service Center, denied the fiancé(e) petition, concluding that the Petitioner did not submit evidence of the Beneficiary's intent to marry her within 90 days of being admitted to the United States.

On appeal, the Petitioner submits statements of both parties indicating their mutual intent to marry each other within 90 days of the Beneficiary's U.S. arrival, along with the Petitioner's statement that the couple already married in Cuba, as well as supporting photographic evidence documenting the purported marriage.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Subject to subsections (d) and (r) of section 214 of the Act, 8 U.S.C. § 1184(d) and (r), nonimmigrant K classification may be accorded to an alien who "is the fiancée or fiance 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 . . ." *See* section 101(a)(15)(K)(i) of the Act.

Section 214(d)(1) of the Act states that a fiancé(e) petition can be approved only if the petitioner establishes that the parties have previously met in person within two years before the date of filing the fiancé(e) 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 90 days after the beneficiary's arrival.

II. ANALYSIS

The Petitioner filed a fiancé(e) petition on October 28, 2015, but did not submit all the evidence required to establish the Beneficiary's eligibility for a K-1 visa. The Director pointed out the insufficiency in initial evidence and sent the Petitioner a request for evidence (RFE), allowing her to submit documentation of the parties' required intent to marry each other within 90 days of the Beneficiary's admission to the United States. The RFE also noted that, because the Petitioner indicated that her fiancé was related to her, the Petitioner was required to answer question 33.a, which asks, "If you are related, state the nature and degree of relationship, e.g., third cousin or maternal uncle, etc."

Responding to the RFE, the Petitioner answered question 33, but did not submit any evidence of the couple's intent to marry each other within the 90 day timeframe. She stated, "I'm sorry not my cousin is not my uncle." The Director determined that the Petitioner had provided insufficient evidence and, accordingly, denied the fiancé(e) petition.

On appeal, the Petitioner submits the parties' missing statements of intent to marry. In addition, the Petitioner provides a handwritten statement that "[t]he wedding was in Cuba" and submits several dozen photographs of a purported marriage between the couple. These include pictures of a receipt for wedding rings, the rings themselves, the couple attired as bride and groom, the couple cutting a cake topped by "bride" and "groom" figurines, and the couple in a horse-drawn carriage with other persons wearing formal attire and standing next to a flower-bedecked white car.

Although the evidence reflects that the Petitioner and the Beneficiary were both unmarried when the fiancé(e) petition was filed, new evidence on appeal indicates that, having wed each other in [REDACTED] 2016, they are no longer unmarried. Accordingly, the Beneficiary is not eligible for a K-1 visa as the fiancé of a U.S. citizen. *See* 8 C.F.R. § 103.2(b)(1)(providing that a beneficiary must continue to be eligible for the requested classification through adjudication of the benefit request).¹

III. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden; however, the denial of this fiancé(e) petition is without prejudice to the filing of another Form I-129F at a future date once a Form I-130 has been filed and the relevant statutory requirements met.

¹ A Form I-129F may also be used to procure a K-3 visa for a spouse. *See* section 101(a)(15)(K)(ii) of the Act. However, it is clear from the record of proceedings as presently constituted, that the Petitioner is seeking K-1 classification for the Beneficiary as her fiancé and not K-3 classification as a spouse.

Matter of M-M-B-

ORDER: The appeal is dismissed.

Cite as *Matter of M-M-B-*, ID 10241 (AAO Aug. 12, 2016)