



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

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

MATTER OF H-A-W-

DATE: AUG. 26, 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 his fiancée. *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 fiancée petition, concluding that the Petitioner is subject to the filing limitations specified at section 214(d)(2)(A) of the Act, 8 U.S.C. § 1184(d)(2)(A), and had failed to request a general waiver of such limitations. The Director also found that the Petitioner did not establish that he was legally free to marry at the time of filing the fiancé(e) petition because he did not submit evidence of the legal termination of his marriage to his first wife.

The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

#### I. LAW

Subject to subsections (d) and (r) of section 214 of the Act, nonimmigrant K classification may be accorded to 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 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. A petitioner or beneficiary is "legally able . . . to conclude a valid marriage" when, in part, any prior marriage has been legally terminated as of the filing date of the fiancé(e) petition. *See*

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8 C.F.R. § 103.2(b)(1)(providing that a petitioner must establish eligibility for an immigration benefit at the time of filing the benefit request).

Fiancé(e) petitions are also subject to certain filing limitation for those petitioners who: (1) have previously filed a fiancé(e) petition for two or more alien fiancé(e)s; or (2) received the approval of a prior fiancé(e) petition and less than two years have passed since the filing date of that previously-approved fiancé(e) petition. *See* section 214(d)(2)(A) of the Act. Petitioners who are subject to the filing limitations must submit a written waiver request, and whether to grant the waiver is at the discretion of U.S. Citizenship and Immigration Services (USCIS). *See* sections 214(d)(2)(B)-(C) of the Act; *see also* Memorandum from Michael Aytes, Associate Director for Domestic Operations, USCIS, HQPRD 70/6.2.11, *International Marriage Broker Regulation Act Implementation Guidance* (July 21, 2006), and Instructions for Petition for Alien Fiance(e).

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

On January 29, 2014, the Petitioner filed a fiancé(e) petition that was approved on August 27, 2014. The U.S. Department of State returned the fiancé(e) petition to USCIS for revocation after review by the consulate in [REDACTED] Ethiopia, indicated that the fiancé(e) petition was incomplete and had expired. On April 3, 2015, the Director notified the Petitioner that the fiancé(e) petition had been returned to USCIS by the U.S. Embassy, that the Beneficiary had not been issued a K-1 visa, that the validity period of the fiancé(e) petition had expired, and that the Petitioner may choose to file a new fiancé(e) petition.

On May 14, 2015, the Petitioner submitted the instant fiancé(e) petition. The Director subsequently issued a request for evidence (RFE), indicating deficiencies in the evidence submitted and informing the Petitioner that the filing limitations apply and the Petitioner must, therefore, request a waiver of such limitations. On July 30, 2015, the Petitioner responded with additional evidence, but failed to submit evidence that the marriage to his first wife had been terminated and failed to submit a waiver request. On September 3, 2015, the Director denied the petition, determining that the Petitioner had not demonstrated that he was legally free to enter in to a marriage at the time of filing the fiancé(e) petition and failed to submit a request for a general waiver.

On appeal, the Petitioner submits a Final Decree of Divorce indicating that he was divorced on [REDACTED] 2012. However, the Petitioner does not request a general waiver. We issued a request for evidence (RFE) to give the Petitioner the opportunity to request a waiver of the filing limitations and demonstrate that he merited a favorable exercise of our discretion in our adjudication of the waiver. In response the Petitioner submits another copy of his final divorce decree, but does not address the other issues identified in the RFE.

## III. ANALYSIS

Both a petitioner and a beneficiary must be unmarried and free to conclude a valid marriage at the time the fiancé(e) petition is filed. *See Matter of Souza*, 14 I&N Dec. 1 (Reg'l Comm'r 1972); 8 C.F.R. § 103.2(b)(1)(providing that eligibility for a requested immigration benefit must be

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established at the time of filing the visa petition). On appeal, the Petitioner submits a Final Decree of Divorce indicating that he was divorced on [REDACTED] 2012, and thus was free to marry at the time of filing the fiancé(e) petition. We withdraw this ground of denial.

As noted above, however, petitioners who are subject to the filing limitations must submit a written waiver request, and whether to grant the waiver is at the discretion of USCIS. Here the Petitioner has not requested a waiver nor provided a reason why he merits a waiver of the filing limitations, despite being given three opportunities to do so. Without a waiver request, the fiancée petition must remain denied.

#### IV. 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of H-A-W-*, ID# 18245 (AAO Aug. 26, 2016)