



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

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

MATTER OF M-P-

DATE: JAN. 15, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a citizen of the United States, seeks to classify the Beneficiary as a fiancé(e) of a United States citizen. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the nonimmigrant visa petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii) because the Petitioner failed to submit required initial evidence, including a divorce decree for his marriage to his first spouse in order to establish his eligibility to marry and a statement from the Beneficiary of her intent to marry the Petitioner within 90 days of entering the United States.

On appeal, the Petitioner explains that he had previously filed a Form I-130, Petition for Alien Relative, for his former spouse, but that she had changed her mind and decided to stay in Vietnam. He further explains how he met the Beneficiary and states that they met in Malaysia. The Petitioner also submits a letter from his son and daughter, a document submitted to the [REDACTED], a marital record for the Beneficiary, and a statement from the [REDACTED].

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:

shall 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].

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It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the Petitioner and Beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed.

The Petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services on July 11, 2014. The Director denied the petition after determining that the Petitioner had not submitted documentary evidence that he was legally free to marry the Beneficiary at the time the petition was filed. The Director found that the document submitted by the Petitioner was not sufficient to demonstrate his eligibility to marry because it was not a signed order by a judge.

On appeal, the Petitioner discusses his first marriage and how he came to meet the current Beneficiary. He further explains that he petitioned for his former spouse to come to the United States, but when she changed her mind and decided to remain in Vietnam with the father of her four children, he withdrew the petition. However, the statement does not explain why he does not have a divorce decree for his first marriage.

On appeal, the Petitioner submits a "Letter of Clarification" to the [REDACTED] in which the Petitioner states that he had married his former spouse in 1977 without registering the marriage and that they were no longer married as of [REDACTED] 2013. We note that this document is a statement that the Petitioner submitted to Vietnamese officials in December 2014, but it is not a government-issued document and as such is not sufficiently probative to demonstrate that his marriage to his former spouse was never valid because it was not registered or that he was otherwise legally able to marry the Beneficiary at the time he filed this petition. We note that the Petitioner did not raise the issue of his former marriage not being registered until his appeal was filed. In a prior affidavit the Petitioner stated that he was in the process of terminating his former marriage, which is not consistent with the assertion that his marriage was never official. Based on these observations, the record does not establish that the Petitioner was free to marry at the time the petition was filed.

We also note that the record does not include a statement from the Beneficiary that she intends to marry the Petitioner within 90 days of entering the United States, which was requested by the Director on October 15, 2014.

The appeal will be dismissed for the above stated reasons. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-P-*, ID# 14948 (AAO Jan. 15, 2016)