

(b)(6)



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

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

MATTER OF M-N-X-

DATE: JAN. 19, 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 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 petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-129F, Petition for Alien Fiancé(e), because the document that the Petitioner submitted to establish the legal termination of her prior marriage was not an official divorce decree and did not show that she was legally free to marry at the time she filed the petition.

On appeal, the Petitioner states that she has established that she is free to marry because, as a refugee in Thailand, she could not obtain a divorce decree from a Thai civil authority; and she has submitted documentation establishing that she was granted a divorce in accordance with [REDACTED] cultural traditions. Alternatively, the Petitioner asserts that because her marriage had not been registered with a Thai civil authority, it was an unrecognized common-law marriage, which does not require a civil divorce. The Petitioner submits a letter from a Thai attorney who concluded that the Petitioner was not legally married in Thailand.

The record includes, but is not limited to, documents establishing identity and citizenship, financial documents, phone records, and affidavits from the Petitioner's family members. The entire record was reviewed and considered in rendering this decision.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" 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[.]

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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 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 except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. . . .

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or does not demonstrate eligibility, U.S. Citizenship and Immigration Services may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing Form I-129F, including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

The Petitioner filed Form I-129F on February 10, 2014. On May 22, 2014, the Director requested that the Petitioner submit a final divorce decree signed by a judge or magistrate to establish the marriage between the Petitioner and her former spouse was terminated. In response to the Director's request, the Petitioner submitted a handwritten divorce decree, dated [REDACTED] 2002, signed by family members granting a divorce to the Petitioner and her former husband. The Director denied the petition, noting that for immigration purposes, this document was not valid, as it does not show evidence of being civilly filed, signed by a judge or magistrate, or recorded; therefore the Petitioner did not establish that her marriage to her spouse had been legally terminated.

On appeal, the Petitioner states that she could not obtain a divorce decree from a court in Thailand, because she was a refugee and not a citizen of Thailand, and she was not allowed to leave the refugee camp. In addition, the Petitioner states that the handwritten document she submitted with Form I-129F, granting her a divorce and signed by family members, "was legal in the refugee camp."

To support her assertion that she and her former spouse were in a common-law traditional marriage and unable to obtain documentation dissolving it in Thailand, the Petitioner submits a certification from an attorney based in Thailand. This attorney certified that he questioned the Petitioner and her former husband, who stated that "they had been living together as husband and wife according to tradition only." The attorney concluded that they were never married according to Thailand's Civil and Commercial Code Section 1457¹ and that "the parties are not legally married."

While the Petitioner and her former spouse may not have been considered married under the laws of Thailand, the record is unclear about where the marriage was celebrated, and therefore, which country's laws apply in this case. According to her July 13, 2014, statement accompanying Form I-129F, the Petitioner married her former spouse in [REDACTED]. According to the Form G-325A, Biographic Information,

¹ This section provides that "[m]arriage under this Code shall be effected only on registration being made" (available at <http://www.thailandlawonline.com/thai-family-and-marriage-law/civil-law-sections-conditions-of-marriage>).

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she submitted with Form I-129F, she entered into her marriage in Thailand. It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)

The Petitioner provides no evidence addressing the recognition and validity of cultural or traditional marriages in [REDACTED] and whether her first marriage complied with that country's legal requirements at the time. The record includes affidavits from the Petitioner and relatives of the Petitioner's former husband, who state that the Petitioner and her former husband had not been married before government officials, that they were married according to [REDACTED] culture, and that family members from both clans agreed to a cultural divorce between them. This evidence, however, does not address where the Petitioner and her former spouse were married and, if in [REDACTED] whether the marriage and divorce were recognized as valid in accordance with the laws of [REDACTED].

In visa petition proceedings, the law of a foreign country is a question of fact which must be proved by the petitioner if she relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). Moreover, section 214(d)(1) of the Act requires the submission of evidence to establish that the petitioner and the beneficiary are "legally able ... to conclude a valid marriage in the United States." See also *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) (parties must be unmarried and free to conclude a valid marriage at the time the petition is filed). In any further proceedings, the Petitioner must resolve inconsistencies concerning the date and place of her first marriage, and if in [REDACTED] either that she was not legally married under the laws of [REDACTED] or that her first marriage was legally terminated.

The record lacks sufficient evidence to establish that the Beneficiary may be classified as the Petitioner's fiancé for immigration purposes, because the Petitioner has not established where she and her former husband were married and whether the country in which they were married recognized their marriage as valid under its laws in effect at the time.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. The Petitioner may file a new Form I-129F on the Beneficiary's behalf in accordance with the statutory requirements. The burden of proof in these proceedings rests solely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-N-X-*, ID# 10916 (AAO Jan. 19, 2016)