



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

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

MATTER OF J-N-F-

DATE: JULY 5, 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 fiancé(e) petition, concluding that the Petitioner: (1) did not submit evidence of the Beneficiary's intent to marry him within 90 days of her admission to the United States; and (2) did not establish that he was legally free to marry at the time of filing the fiancé(e) petition.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and copies of previously-submitted documents and asserts that he was free to marry.

Upon *de novo* review, we will dismiss.

I. APPLICABLE 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 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.

(b)(6)

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II. ANALYSIS

The issues in this proceeding are whether the Petitioner submitted evidence of the Beneficiary's intent to marry him upon her admission into the United States, and whether he has established that he was free to marry at the time of filing fiancé(e) petition, which the record of proceedings shows was on June 8, 2015. On appeal, the Petitioner submits a statement from the Beneficiary of her intent to marry him upon her arrival into the United States, so we withdraw this ground of denial; however, the evidence still does not establish that the Petitioner was free to marry at the time of filing the fiancé(e) petition.

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 established at the time of filing the visa petition).

On appeal, the Petitioner contends that he was free to marry on the day that he filed for divorce, and that his prior spouse now resides in Uganda. The Petitioner provides copies of previously-submitted documents, including: a Divorce/Separate Support Summons, dated August 17, 2015; and a Complaint for Divorce, filed on August 17, 2015. The record of proceedings also contains a Case Management Conference Notice and Order, Domestic Relations/Equity, also dated August 17, 2015, that indicates a conference was to be held on February 22, 2016. Subsequent to filing the appeal the Petitioner submitted a Certificate of Divorce/Absolute, dated June 1, 2016, that indicates that the Petitioner's divorce became absolute on [REDACTED] 2016. None of these documents show that the Petitioner's divorce from his spouse was final as of June 8, 2015. To the contrary, all of them are dated after the fiancé(e)petition was filed and indicate that the Petitioner's divorce did not become final until [REDACTED] 2016, nearly one year after he petitioned for his fiancé. Accordingly, the record does not establish that the Petitioner was legally free to marry the Beneficiary as of June 8, 2015, which is the filing date of the fiancé(e) petition.

III. CONCLUSION

It is the Petitioner's burden to establish eligibility for the 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 fiancé(e) petition at a future date once the statutory requirements are met.

ORDER: The appeal is dismissed.

Cite as *Matter of J-N-F-*, ID# 17017 (AAO July 5, 2016)