



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

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

MATTER OF F-M-

DATE: JULY 25, 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 did not establish that he was legally free to marry at the time of filing the fiancé(e) petition because termination of his marriage to his first wife occurred after the petition's filing.

The matter is now before us on appeal. On appeal, the Petitioner states that his marriage was terminated earlier than the court clerical unit dated his divorce decree.

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

#### 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. 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.

(b)(6)

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See 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).

## II. ANALYSIS

The Petitioner filed the fiancé(e) petition with U.S. Citizenship and Immigration Services (USCIS) on September 30, 2015. The Director denied the fiancé(e) petition, finding that the Petitioner's prior marriage was not legally terminated at the time of the petition's filing because his divorce did not become final until [REDACTED] 2015. On appeal, the Petitioner asserts that the final divorce hearing was held on [REDACTED] 2015, and that the judge told him during those proceedings that he was being restored to "single" as of that day, but that because the proceedings occurred late in the afternoon, the final dissolution would be mailed to him. The Petitioner cites to a paragraph of the [REDACTED] 2015, hearing stating that the "parties are hereby restored to the status of being single." The Petitioner states that the judge had responded "yes" when he asked if he was single, but that the judge had cautioned him to not get married until court papers were in his hand. The Petitioner also asserts that he went through a long, emotional divorce process and waiting for his fiancée is causing him stress and harming his health.

Although the Final Judgment of Dissolution of Marriage for the Petitioner's marriage to his first wife indicates that the hearing before the court was held on [REDACTED] 2015, and documents indicate that the Petitioner's alimony payments to his first wife were to begin on October 1, 2015, the final judgment is dated as "done and ordered" on [REDACTED] 2015, three days after the filing of the fiancé(e) petition. Therefore, the Petitioner was not legally able to conclude a valid marriage at the time of filing the fiancé(e) petition on September 30, 2015, and his fiancé(e) petition may not be approved.

## 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, that burden has not been met; 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 F-M-*, ID# 18093 (AAO July 25, 2016)