



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

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

MATTER OF V-W-M-F-N

DATE: JULY 27, 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 her fiancé. *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 she was legally free to marry at the time of filing the fiancé(e) petition because she did not submit evidence of the legal termination of her marriage to her first spouse.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence.

Upon *de novo* review, we will sustain 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 fiance 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* 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).

(b)(6)

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II. ANALYSIS

On appeal, the Petitioner submits a judgment of dissolution of marriage that indicates the marriage to her first spouse was terminated on [REDACTED] 1991. The evidence in the record of proceedings now establishes that the Petitioner was legally free to marry the Beneficiary on April 14, 2015, which is the filing date of the fiancé(e) petition.

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 been met.

ORDER: The appeal is sustained.

Cite as *Matter of V-W-M-F-N*, ID# 18133 (AAO July 27, 2016)