

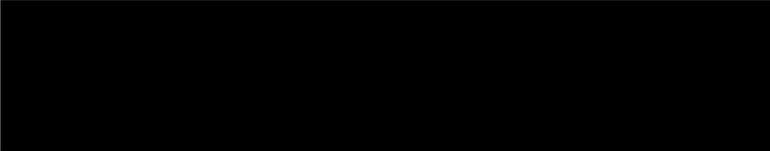
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U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 05 2007

WAC 06 268 51478

IN RE:

Petitioner:
Beneficiary



PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ethiopia, as the fiancée of a United States citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K). The director denied the petition after determining that the petitioner and the beneficiary were already married (on November 1, 2005) at the time the petition was filed. On appeal, the petitioner states that he and the beneficiary were not married at any time, and that the marriage certificate proffered by the beneficiary is erroneous. He asserts, furthermore, that his first wife was not deceased until December 16, 2005, and that he and the instant beneficiary decided to get married only after his first wife's death.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

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. . . .

The record includes the June 5, 2006 denial of a petition for alien relative that the petitioner filed on behalf of his first wife. The petition was denied due to the former beneficiary's death, which occurred on December 15, 2005, according to the enclosed death certificate. The record indicates that the petitioner and current beneficiary met in Ethiopia on May 12, 2005 when they appeared in court in Ethiopia regarding the beneficiary's relinquishing her three children to the petitioner for "adoption." Although on appeal the petitioner states that he married his first wife in Kenya on April 25, 2005, the adoption court record issued on May 13, 2005 notes that the petitioner was not married. Nevertheless, in view of the approval of his petition on behalf of his first wife, it is concluded that the two were determined to have been legally married, and there is no evidence that the marriage ended prior to his first wife's death in December 2005.

The current beneficiary's marriage certificate indicates that she and the petitioner were married pursuant to Sharia law on November 1, 2005, while the petitioner's first wife was still alive. The petitioner asserts that the two were not married on November 1, 2005 or at any other time, and that the certificate was provided to the beneficiary based on incorrect information. The AAO notes that Citizenship and Immigration Services (CIS) would not recognize the petitioner's second marriage if it occurred during his first marriage. The AAO therefore finds that the petitioner and beneficiary were not married for USCIS purposes.

Additionally, the record reflects that the petitioner and beneficiary met in person within the two years preceding the date of the petition. The petition was filed on September 11, 2006, and the evidence establishes that the petitioner and beneficiary met in May 2005. The evidence shows that the petitioner and beneficiary meet the requirements set forth under § 214(d) of the Act.

As the petitioner has now met the burden of establishing the beneficiary's eligibility for classification as a fiancée pursuant to § 101(a)(15)(K) of the Act, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained, and the application is approved.