



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 19 2015**

FILE: [REDACTED]
PETITION RECEIPT: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) in your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Iran, as the fiancée of a U.S. 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 Form I-129F, Petition for Alien Fiancé(e), because the document that the petitioner submitted to establish the legal termination of his prior marriage was not an official divorce decree and did not show that he was legally free to marry at the time he filed the petition.

On appeal, the petitioner states that, at the time of filing, he requested an extension of time to submit his divorce decree because the divorce was not yet final; he obtained a copy of his final divorce decree on August 16, 2013 and submitted it a day later. The petitioner also submits additional evidence.

Applicable Law

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[.]

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 (USCIS) 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.

Factual and Procedural History

The petitioner filed Form I-129F on October 4, 2012. On April 11, 2013, the director requested that the petitioner submit evidence to establish the marriage between the petitioner and his prior spouse was terminated; that he and the beneficiary met within the two-year period immediately preceding filing the Form I-129F; letters from the petitioner and the beneficiary stating their intention to marry one another within 90 days of the beneficiary's admission to the United States. The director also requested that the petitioner complete the Form I-129F at part C, question 2, concerning convictions of specific crimes. In response to the director's request, the petitioner answered the Form I-129F question and provided most of the requested evidence. He did not provide evidence, however, to establish the marriage to his former spouse had been terminated at the time he filed Form I-129F. The director denied the petition because the petitioner's marriage to his former spouse had not been legally terminated.

On appeal, the petitioner submits a final decree of divorce, entered on [REDACTED]; and a letter, dated July 6, 2013, stating that he had been awaiting his divorce decree from the court and requesting additional time to submit the divorce decree. He also submits additional relevant documents, including evidence of the petitioner's and the beneficiary's meeting in Turkey in March 2012 and on July 25, 2012; letters from the petitioner and the beneficiary stating their intention to marry one another within 90 days of the beneficiary's admission to the United States; and a copy of the petitioner's U.S. passport.

Analysis

It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. The record still lacks evidence from the petitioner and the beneficiary to establish that the beneficiary could be classified as the applicant's fiancée for immigration purposes. The final decree of divorce for the beneficiary's divorce, submitted on appeal, indicates that the divorce decree was entered on [REDACTED]. The Form I-129F was filed on October 4, 2012. As the petitioner's divorce was not final until [REDACTED] he was not legally free to marry at the time the petition was filed, on October 4, 2012, and beneficiary could not be classified as the applicant's fiancée for immigration purposes. Therefore, the appeal will be dismissed.

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 petition 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.