



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 19 2015**

FILE: [REDACTED]

PETITION RECEIPT: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]
AKA: [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, Nebraska Service Center, denied the nonimmigrant visa petition. 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 Guinea, as the K-3 spouse 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 petitioner's spouse was not the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by the petitioner and therefore cannot be classified as the K-3 spouse of a U.S. citizen. The director noted that the Form I-130 the petitioner filed on behalf of the beneficiary was denied on November 7, 2014, for lack of evidence.

On appeal, the petitioner states that he timely submitted the documents the director requested during the adjudication of Form I-130 and submits copies of his and the beneficiary's birth certificates, his naturalization certificate, and passport-style photographs for himself and the beneficiary.

Applicable Law

8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, . . . the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F.

In order for the beneficiary to be classified as a K-3 nonimmigrant, the regulations at 8 C.F.R. § 214.2(k)(7) require that a Form I-130 be approved prior to the proper filing of a Form I-129F petition on behalf of the beneficiary. As noted above, the Form I-130 petition filed by the petitioner on behalf of the beneficiary was denied. We do not have jurisdiction over appeals of Form I-130 denials, which are reviewed by the Board of Immigration Appeals, pursuant to 8 C.F.R. § 1003.1(b)(5). The applicant's assertions that he timely submitted evidence to support his Form I-130 filed on the beneficiary's behalf, therefore, are not determinative in this case. Because the petitioner filed the current Form I-129F before Form I-130 was approved, the beneficiary cannot to be classified as a K-3 nonimmigrant and is not eligible for the benefit sought.

The denial of this petition is without prejudice. Once the petitioner files a Form I-130 for his spouse, he may file a new I-129F petition on her behalf in accordance with the statutory requirements.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25

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I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.