



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

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

MATTER OF B-H-

DATE: DEC. 17, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a citizen of the United States, seeks to classify the Beneficiary as a fiancée of a United States citizen. *See* Immigration and Nationality Act (INA, or the Act) § 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). The Director, California Service Center, denied the petition. The matter is now before us on appeal. We issued a request for evidence (RFE), to which the Petitioner responded. The appeal will be dismissed.

On January 9, 2015, the Director denied the nonimmigrant visa petition because the Petitioner did not submit required initial evidence. Specifically, the Director found that the Petitioner did not submit evidence that the Beneficiary's previous marriage had been terminated. *Id.*

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence submitted upon appeal.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act 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 2 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 [her] discretion may waive the requirement that the parties have previously met in person. . . .

(b)(6)

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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 may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a Form I-129F, including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

The Petitioner filed the Form I-129F on August 25, 2014, without sufficient supporting evidence. For this reason, on October 17, 2014, the Director issued an RFE which requested evidence that the Beneficiary's previous marriage had been legally terminated. In response to the RFE, the Petitioner provided a certificate of celibacy from the Beneficiary. The Petitioner had provided a copy of an agreement to stop living in a de facto relationship between the Beneficiary and his previous spouse with the Form I-129F.

On January 9, 2015, the Director denied the petition, finding that the Petitioner had not submitted sufficient evidence to establish that the Beneficiary's marriage had been legally terminated.

On appeal and in response to our October 8, 2015, RFE, the Petitioner submits a Cambodian Marriage Certificate and Order of Divorce from the Judge of the Court of First Instance. The marriage certificate reflects that the Beneficiary was legally married to his previous spouse on [REDACTED] 1989. The order of divorce indicates that the Beneficiary's marriage was legally terminated by the court on [REDACTED] 2015. The Form I-129F, however, was filed by the Petitioner on August 25, 2014. As such, the record reflects the Beneficiary was not legally free to marry the Petitioner at the time the Form I-129F was filed. A petitioner must establish eligibility at the time of filing. See 8 C.F.R. 103.2(b)(1) .

In fiancé(e) visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. As stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition.

ORDER: The appeal is dismissed.

Cite as *Matter of B-H-*, ID# 13803 (AAO Dec. 17, 2015)