



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 06 2015

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

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

PETITION: Petition for Alien Fiancée 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) for 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, Texas Service Center, denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a U.S. citizen who seeks to classify the beneficiary, a native and citizen of Nigeria, 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).

On September 4, 2013, the Director denied the petition, stating that the beneficiary cannot be classified as a fiancée for immigration purposes, as the record indicates that the petitioner and the beneficiary are married.

On appeal, the petitioner states that the Director's decision is not consistent with decisions that he received on previous marriages and petitions.¹ He states that the evidence considered was "ruled out" as proof of a legal marriage in his previous marriages and "destroyed" those marriages. He submits photocopies of a Nigerian marriage certificate for his marriage to his former spouse and sworn affidavits from his former spouse, witnesses and family members concerning the celebration of that marriage. The entire record was reviewed and considered in rendering a decision on this appeal.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides that subject to subsections (d) and (p) of section 214, nonimmigrant classification may be provided to an alien who:

(i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii)(I) of this title) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii)(I) of this title) who is the petitioner, is the beneficiary of a petition to accord a status under section 1151(b)(2)(A)(i) of this title that was filed under section 1154 of this title 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[.]

A petition for a fiancée visa (K-1 visa) must show that: the petitioner is a U.S. citizen; the petitioner and beneficiary intend to marry within 90 days of the beneficiary/fiancée entering the United States;

¹ The petitioner timely filed his appeal on September 24, 2013; however, we did not receive the appeal until December 16, 2014.

the petitioner and the beneficiary are both free to marry and any previous marriages must have been legally terminated by divorce, death, or annulment; and the petitioner and beneficiary met each other, in person, at least once within two years of filing the petition, unless an exception applies.

The petitioner filed the Form I-129F, Petition for Alien Fiancé(e) (Form I-129F), with U.S. Citizenship and Immigration Services (USCIS) on March 18 2013, indicating that he was divorced and the beneficiary was single. However, sworn affidavits submitted in response to a request for evidence indicate that the petitioner and the beneficiary were married in a traditional ceremony in Nigeria on [REDACTED] 2011.

On appeal, the petitioner states that “in [his] previous marriages and petitions, marriage certificates and affidavits were ruled out as evidence for legal marriage.” He does not state on appeal that he and the beneficiary are not married, and he does not provide new evidence concerning his marital status. Assuming the petitioner asserts on appeal that he and the beneficiary are not legally married, he bears the burden of proof to show that their marriage is not valid. Determinations concerning petitions filed for a previous marriage involving other individuals do not inform our decision on the current petition. In addition, the evidence necessary to satisfy the petitioner’s burden of proof that his marriage is valid for immigration purposes in an immediate relative petition differs from the evidence needed to satisfy his burden in the present proceedings, to show that the beneficiary is eligible for a fiancée visa.

Therefore, if the petitioner is asserting that he and the beneficiary are not currently married and that their marriage, as referenced in the beneficiary’s affidavit dated July 31, 2013, is not valid under Nigerian law, he bears the burden of proving that assertion. Section 291 of the Act, 8 U.S.C. § 1361. If the petitioner is not in fact married, then he must provide documentation to show why the marriage referenced in the affidavits on record is not valid. As it stands, the record indicates that the petitioner and beneficiary are married and, as such, the beneficiary is not eligible for a K-1 fiancée visa.²

Married individuals may seek a K-3 nonimmigrant visa; however, the process differs from that for engaged individuals seeking a K-1 visa.

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....

To be eligible for a K-3 nonimmigrant visa, an individual must be married to a U.S. citizen and have

² The U.S. Department of State reciprocity schedule offers guidance concerning the evidence necessary to prove the validity of a marriage for immigration purposes.

a pending Form I-130, Petition for Alien Relative (Form I-130), filed by the U.S. citizen spouse on his or her behalf. A petitioner may submit a Form I-129F on behalf of their spouse seeking to have them classified as a K-3 nonimmigrant in accordance with the regulations at 8 C.F.R. § 214.2(k)(7). This process requires that a Form I-130 be filed prior to the filing of a Form I-129F petition on behalf of the beneficiary. The record does not indicate that the petitioner filed a Form I-130 on behalf of his spouse. As such she cannot be classified as a K-3 nonimmigrant. Because the record indicates that the petitioner and the beneficiary are married, the beneficiary cannot be classified as a K-1 nonimmigrant.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.