



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

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

MATTER OF R-S-U-A-

DATE: OCT. 21, 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 fiancé(e) of a United States citizen. *See* Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

On December 12, 2014, the Director denied the nonimmigrant visa petition because the Petitioner did not submit evidence demonstrating that he is legally free to marry the Beneficiary.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. . . .

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 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 May 21, 2014 without sufficient supporting evidence. For this reason, on September 5, 2014, the Director issued a request for evidence (RFE) which, among other things, requested evidence on the Petitioner's divorce from his prior spouse. The Director noted that the Petitioner's 2013 Dominican divorce is not legally recognized by USCIS, as neither party resided in the Dominican Republic. In response to the RFE, the Petitioner submitted a statement that he understood the Dominican divorce to be legal along with copies of his U.S. passport reflecting his travel to the Dominican Republic and copies of photographs of him and the Beneficiary.

On December 12, 2014, the Director denied the petition finding that the Petitioner had not submitted evidence that that he is legally free to marry the Beneficiary. The Director determined that neither the Petitioner nor his spouse were a resident of the Dominican Republic at the time of divorce. As such, the Director found that the Petitioner's Dominican divorce in 2013 is not legally recognized by USCIS. On appeal, the Petitioner submits case law and statutes in support of his assertion that his Dominican divorce is legal and should be recognized by USCIS. The Petitioner submits a letter explaining his reasons for seeking a divorce in the Dominican Republic, copies of his Massachusetts marriage certificate, Dominican divorce decree with publication of divorce, marital settlement agreement, special power of attorney, and copies of the Petitioner's spouse's social security card and Massachusetts identity card. The Petitioner also submits copies of his U.S. passport reflecting travel to the Dominican Republic and travel to visit his fiancée, an itinerary reflecting his travel to the Dominican Republic, and photographs of himself with the Beneficiary.

The record contains a January 15, 2013, Dominican divorce decree for the Petitioner and his prior spouse. The Dominican Republic does not require that either spouse reside in the country in seeking a divorce. It only requires that one of the spouses be present at the divorce hearing. *See* Dominican Divorce Law 142 (1971). In this case, the Petitioner's entry/exit stamps in his passport indicate that he was only present in the Dominican Republic for one day, and the divorce paperwork shows that the Petitioner attended his divorce hearing that same day. The Petitioner admits, and the record reflects, that his prior spouse was not present for the hearing. As such, the record reflects that the Petitioner was present at his Dominican divorce hearing, and consequently, that he satisfied the presence requirement for a Dominican divorce. However, the Petitioner does not assert, nor does the evidence indicate that either spouse was or had ever been a resident of the Dominican Republic.

While the Petitioner submits case law from the Supreme Courts of Tennessee and New York in which they recognize Dominican divorce decrees, the Petitioner does not submit sufficient evidence to demonstrate that Massachusetts, the state of his residence, recognizes Dominican divorce decrees where neither party resides in the Dominican Republic. Furthermore, even if the Applicant submitted documentation indicating that Massachusetts recognized the foreign divorce, USCIS does not recognize a foreign divorce for immigration purposes if neither spouse was a resident of the foreign country. *See Matter of Ma*, 15 I&N Dec. 70 (BIA 1974); *Matter of Assan*, 15 I&N Dec. 218 (BIA 1975). Accordingly, as the Petitioner has not established that he was legally divorced from his prior spouse, he has not shown that he is legally free to marry the Beneficiary.

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The appeal will be dismissed for the above stated reasons. 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 R-S-U-A-*, ID# 13994 (AAO Oct. 21, 2015)