



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

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

MATTER OF K-D-C-K-

DATE: APR. 11, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary as her fiancé. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). A U.S. citizen may petition to bring a fiancé(e) (and that person's children) to the United States in K nonimmigrant visa status for marriage. The U.S. citizen must 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 90 days of admission.

The Director, Texas Service Center, denied the petition. The Director concluded the Petitioner was not eligible to file the petition because she was not legally free to conclude a valid marriage with the Beneficiary at the time the petition was filed.

The matter is now before us on appeal. In the appeal, the Petitioner submits additional evidence and claims that she is legally divorced and that the evidence of her divorce has been previously submitted into the record.

Upon *de novo* review, we will dismiss the appeal.

#### I. LAW

The Petitioner is seeking to classify the Beneficiary as her fiancé.

Subject to subsections (d) and (p) of section 214 of the Act, section 101(a)(15)(K)(i) of the Act provides nonimmigrant classification for an alien who "is the fiancée or fiance 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

(b)(6)

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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 . . . .

## II. ANALYSIS

The issue presented on appeal is whether the Petitioner was unmarried and free to conclude a valid marriage at the time the petition was filed. On appeal, the Petitioner submits a copy of a final judgement of divorce and states that she is now legally divorced and intends to marry the Beneficiary. The record does not establish that the Petitioner was legally free to marry the Beneficiary at the time the petition was filed.

Both the petitioner and the beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. *See Matter of Souza*, 14 I&N Dec. 1 (Reg'l Comm'r 1972). The Petitioner filed the petition on March 3, 2014. On appeal, the Petitioner submits a copy of a final judgement of divorce issued by the Circuit Court, [REDACTED] Florida, which indicates that the Petitioner's marriage to her prior spouse was dissolved on [REDACTED] 2014, three months after the petition was filed.

A petitioner must establish eligibility for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2 (b)(1). As the Petitioner's divorce was not final until [REDACTED] 2014, she was not legally free to marry at the time the petition was filed on March 3, 2014, and the Beneficiary cannot be classified as the Petitioner's fiancé for immigration purposes based on the current petition.

## III. CONCLUSION

It is the Petitioner's burden to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden. Accordingly, we dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K-D-C-K-*, ID# 16076 (AAO Apr. 11, 2016)