



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

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

MATTER OF T-T-K-

DATE: FEB. 22, 2016

APPEAL OF TEXAS 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* Immigration and Nationality Act (the Act) § 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the nonimmigrant visa petition because the Petitioner did not submit the required initial evidence in support of the Petition for Alien Fiancé(e). The Petitioner timely filed an 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 his 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*.

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The Petitioner filed the fiancé(e) petition with USCIS on March 3, 2014, without all the required supporting initial evidence. For this reason, October 1, 2014, the Director issued a request for evidence (RFE) requesting the Petitioner to submit additional documents, including proof of the legal termination of the Beneficiary's prior marriage, statements from the Petitioner and the Beneficiary of their mutual intent to marry within 90 days of the Beneficiary's admission into the United States, and documents to establish that the Petitioner and the Beneficiary met in person during the two-year period immediately preceding the filing of the petition. The Petitioner submitted statements from the [REDACTED] dated May 28, 2004, the Provincial Administration Office dated July 2, 2004, the [REDACTED] Police Department dated May 24, 2004, and the [REDACTED] Police dated March 16, 2004. The statements indicate that the Beneficiary reported on January 31, 2004, that her husband had disappeared and that their efforts to find him had been fruitless. The Petitioner submitted statements for himself and the Beneficiary stating their intent to marry within 90 days of the Beneficiary's admission into the United States and three photographs of the Petitioner and the Beneficiary. The Petitioner also submitted photocopies of [REDACTED] Airlines boarding passes dated November 15, 2013, November 16, 2013 and November 20, 2013, as well as a Kenya visa issued on November 16, 2013 and two stamps from Kenya immigration dated November 16, 2013 and November 19, 2013. The Director found the evidence insufficient to establish eligibility for benefit sought and on May 26, 2015, denied the petition accordingly. The Director found that the Petitioner had not submitted credible and probative evidence of the legal termination of the Beneficiary's prior marriage and had not established that he and the Beneficiary met in person during the two-year period immediately preceding the filing the petition.

The Petitioner timely appealed. On appeal, the Petitioner claims that the photographs, the airline boarding passes, the Kenya visa, and the Kenya immigration stamps are sufficient evidence to establish that the Petitioner and the Beneficiary met in person during the two- year period immediately preceding the filing of the petition. The Petitioner does not address the lack of credible evidence to show that the Beneficiary's prior marriage had been terminated.

The documents provided by the Petitioner do not establish that the Petitioner and the Beneficiary had met in person during the requisite time period, specifically between March 3, 2012 and March 3, 2014. Although the Petitioner's passport stamp and the Kenya visa indicate that he traveled to Kenya in 2013, there is no further evidence that he met the Beneficiary in Kenya. The photographs of the Petitioner and the Beneficiary do not bear any notation as to the date the photographs were taken, where they were taken, or the circumstances, and as noted by the Director, they appear to be altered or photo-shopped. Absent additional documentary evidence, such as detailed affidavits from witnesses attesting to the Petitioner and the Beneficiary's presence in Kenya in November 2013 or other relevant evidence demonstrating that the Petitioner met the Beneficiary in November 2013, the evidence of record is not sufficient to establish by a preponderance of the evidence that the Petitioner and the Beneficiary have met in person within 2 years before the date of filing the petition.

The Form I-129F indicates that both the Petitioner and the Beneficiary were previously married to other individuals. Section 214(d) of the Act requires the Petitioner to establish that he and the Beneficiary are legally free to conclude a valid marriage. In order to establish that the parties are legally able to conclude a valid marriage, the Petitioner must submit evidence that all prior marriages have been

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terminated. Evidence of termination of prior marriages includes, but is not limited to, a final divorce decree, or an annulment or a death certificate issued by a competent civil authority. The Petitioner submitted a copy of a Judgement of Divorce issued by the Superior Court of California, County of [REDACTED] showing that the marriage between the Petitioner and his prior spouse was terminated on [REDACTED] 2004. The Petitioner has not submitted evidence to show when the marriage between the Beneficiary and her prior spouse terminated. The statements from the [REDACTED] Police and the Provincial Administrative Office state that the Beneficiary had reported her husband missing in 2004, but there is no evidence that he was never found, court declaration that he was presumed to be dead, or any other evidence that the marriage was legally terminated.

It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg'l Comm'r 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. In this case, the Petitioner has not established that the Beneficiary was legally free to marry on [REDACTED] 2014, the date he filed the Form I-129F. Without this evidence, the Petitioner and the Beneficiary would not be legally able to conclude a valid marriage in the United States and the Beneficiary cannot be classified as a fiancée of a U. S. citizen. The Petitioner is therefore not eligible for the benefit sought.

As the Petitioner has not submitted all of the required initial evidence on appeal, the Director's decision to deny the petition shall not be disturbed. 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.

Cite as *Matter of T-T-K-*, ID# 15387 (AAO Feb. 22, 2016)