U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-D-S-

DATE: FEB. 25, 2016

APPEAL OF VERMONT 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, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before us on appeal. The appeal will be sustained.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

> An alien who 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 entry. . . .

Section 214(d) of the Act, 8 U.S.C. § 1184(d), 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 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 a period of ninety days after the alien's arrival . . . .

In 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.

The Petitioner filed the Form I-129F, Petition for Alien Fiancé(e) with U.S. Citizenship and Immigration Services on November 21, 2011. The Director denied the petition after determining that the Petitioner had failed to submit documentary evidence that the Beneficiary was legally free to marry the Petitioner at the time the petition was filed. The Director concluded that the Petitioner had failed to demonstrate that the Beneficiary was divorced from a former spouse.

On appeal, the Petitioner asserts that she mistakenly used an informal "nick-name" when referring to a former spouse of the Beneficiary on forms used to file this petition. She further explains that the divorce decree submitted on appeal uses the former spouse's family given name and establishes that the Beneficiary was free to marry at the time the petition was filed. The divorce decree indicates the

marriage was dissolved in 2003, not 2001 as the Petitioner originally asserted. The current petition was not filed until November 21, 2011, and based on this evidence we can conclude that the Beneficiary was legally free to marry at the time the petition was filed.

On December 18, 2015, we requested that the Petitioner submit statements from the Beneficiary and Petitioner of their mutual intent to marry within 90 days of the Beneficiary's admission into the United States. The Petitioner timely responded and submitted the requested documentation.

The appeal will be sustained for the above stated reasons. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of L-D-S-*, ID# 14663 (AAO Feb. 25, 2016)