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U.S. Department of Homeland Security
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Washington, DC 20529



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



FILE:

WAC 05 159 51771

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 18 2006

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Mexico, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The record reflects that the petition was filed with the service center on May 10, 2005. At the time of filing, the petitioner submitted a marriage certificate documenting his marriage to the beneficiary on November 1, 2002. As the beneficiary was married to the petitioner at the time of filing, the director determined she was not a fiancée and, therefore, was ineligible for benefits under section 101(a)(15)(K) of the Act. *Decision of the Director*, dated July 1, 2005.

However, the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) has amended the language of section 101(a)(15)(K) of the Act to allow U.S. citizens to file Form I-129F fiancé(e) petitions for their spouses if they have already filed Form I-130 alien relative petitions on their behalf.

Under section 101(a)(15)(K)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(K)(ii), a spouse may benefit from a Form I-129F petition if he or she:

(ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 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....

Further explanation is provided at 8 C.F.R. § 214.2(k)(7):

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien 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....

There is no evidence in the record that a Form I-130 visa petition was filed by the petitioner on behalf of his wife prior to his submission of the Form I-129F, nor has a check of CIS databases indicated that this is the case. As a result, the beneficiary cannot benefit from the instant petition. Therefore, the appeal is dismissed.

The denial of this petition is without prejudice. Once the petitioner files a Form I-130 on behalf of his wife, he may file a new I-129F petition on her behalf in accordance with the statutory requirements.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.