



U.S. Citizenship
and Immigration
Services

(b)(6)




Date: **AUG 06 2015**

FILE: 

PETITION RECEIPT: 

IN RE:

Petitioner: 

Beneficiary: 

PETITION:

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

ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,


for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the fiancé(e) visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings consistent with this decision.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Egypt, as the fiancé 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 director denied the nonimmigrant visa petition based on the petitioner's failure to submit sufficient evidence that the beneficiary is free to marry another person. See *Decision of the Director*, dated October 9, 2014.

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 . . . [emphasis added].

It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed.

Here the record indicates that the petitioner initially filed Form I-129F with U.S. Citizenship and Immigration Services (USCIS) on behalf of the beneficiary on June 19, 2012, and the petition was approved on September 8, 2012. On January 10, 2014, the director issued a Notice of Decision to the petitioner advising that the period of validity for the initial Form I-129F had expired and the petition would not be revalidated. The director advised the petitioner that she may choose to file a new Form I-129F.

The petitioner filed a second Form I-129F on February 24, 2014. On May 22, 2014, the California Service Center issued a Request for Evidence (RFE) for the applicant to submit a divorce decree, death certificate, or certificate on non-existence of marriage record, as records from the American Consular Section in [REDACTED] indicated that the beneficiary was married on [REDACTED] 2011, to another person.

In response to the RFE the petitioner submitted a statement asserting that the Ministry of Interior and the Ministry of Justice in Egypt refused to issue a letter or a certificate of non-existence of marriage because no such paper exists, but that they issued an Extract of Family Registration and informed the

petitioner and beneficiary that this paperwork is used to show a person as single. The director determined that the evidence submitted by the applicant is insufficient to establish that the beneficiary is legally free to marry and denied the petition.

On appeal the petitioner submits a statement, letters from a private investigator, a copy of the beneficiary's national identity document, an Extract of Individual Registration showing the beneficiary as "single", and a copy of the marriage certificate of the women to whom the beneficiary is suspected of being married.

In her statement the petitioner states that the beneficiary had gone to the Ministry of Civil Affairs in Egypt to ask for a certificate on non-existence but was told the paper does not exist and was instead issued an Extract of Family Registration and Extract of Individual Registration which show his marital status as single. Letters from a private investigator indicate that a search of records shows that the beneficiary is listed as "single". The petitioner further asserts that a lawyer in Egypt obtained marriage records that show the woman to whom the beneficiary is suspected of being married is actually married to someone with a similar, but different, name and that the registration numbers of this individual and the beneficiary are different.

In light of the evidence submitted by the petitioner on appeal, the matter will be remanded to the director to determine whether, based on the evidence submitted, the petitioner has established that the beneficiary is legally able to marry. The director may request any additional information or evidence that is deemed necessary. 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).

ORDER: The appeal is remanded for further proceedings consistent with this decision.