



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

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

In Re: 16629465

Date: JUL. 23, 2021

Appeal of California Service Center Decision

Form I-129F, Petition for Alien Fiancé(e)

The Petitioner, a U.S. citizen, seeks the Beneficiary's admission to the United States under the fiancé(e) visa classification.<sup>1</sup> A U.S. citizen may petition to bring a fiancé(e) to the United States in K-1 status for marriage.

The Director of the California Service Center denied the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), concluding that the record did not establish the Petitioner's legal ability to marry the Beneficiary.

On appeal, the Petitioner asserts the Director erred and submits additional evidence. Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Section 214(d)(1) of the Act states that a fiancé(e) petition can be approved only if the petitioner establishes that the parties have previously met in person within two years before the date of filing the fiancé(e) 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 90 days after the beneficiary's arrival.

An applicant or petitioner must establish that she or he is eligible for the requested benefit at the time of filing the application or petition.<sup>2</sup>

## II. ANALYSIS

The Petitioner filed the fiancé(e) petition on November 14, 2019. The Director issued a request for evidence (RFE) explaining, in part, that the Petitioner had not established her ability to marry the Beneficiary because she did not submit any evidence to establish her first marriage had been terminated. In response to the Director's RFE, the Petitioner submitted a document titled "Religious

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<sup>1</sup> See Immigration and Nationality Act (the Act) section 101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i) (the "K-1" visa classification).

<sup>2</sup> 8 C.F.R. § 103.2(b)(1)

Divorce Certificate,” which stated that the Petitioner and her first husband divorced in 2014 in [redacted]  
[redacted]

The Director’s decision explained that the Petitioner’s divorce document was insufficient evidence of divorce because the “Religious Divorce Certificate” is not a final decree of divorce from a civil authority. On appeal, the Petitioner provides a document with English translation titled [redacted] [redacted] Iraq Judicial Council Presidency of Appealing Court [redacted] Court of Personal Status in [redacted] dated October 4, 2020. However, this document is insufficient to establish eligibility at the time of filing the petition because it explains that the Petitioner divorced her first husband on [redacted] 2020, nearly a year after the petition was filed, and it further states that the Petitioner’s first husband “can go back to the [Petitioner] during the legally prescribed waiting period which is three menstruations and that the [Petitioner] is not allowed to marry another man except after expiration of her legally prescribed waiting period.”<sup>3</sup>

Thus, the plain language of this document states that the Petitioner was not legally divorced and able to marry the Beneficiary until approximately December 2, 2020. The regulations require the Petitioner to establish eligibility for the benefit sought at the time of filing the petition. Because she did not have the legal ability to marry the Beneficiary at the time of filing the petition in November 2019, the appeal must be dismissed in accordance with 8 C.F.R. § 103.2(b)(1).

### III. CONCLUSION

The Petitioner has not established that at the time of filing the petition she was legally able to marry the Beneficiary pursuant to section 214(d)(1) of the Act. We note, however, that the denial of this petition is without prejudice to the filing of another fiancé(e) petition at a future date once the statutory and regulatory requirements are met.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> The record, as presently constituted, does not explain the Petitioner’s two different divorce dates. As stated above, the Petitioner submitted two documents of divorce, one of which states that she was divorced in 2014 and the other stating that her marriage was terminated in [redacted] 2020. The Petitioner should be prepared to resolve this discrepancy in any future filings.