U.S. Department of Homeland Security
P.O. Box 10129
Laguna Niguel, CA 92607-1012

U.S. Citizenship and Immigration Services

TO:

[redacted]

DATE: JUN 27 2013

Petition: Form I-129F

File: [redacted]

DECISION

Your Form I-129F, Petition for an Alien Fiancé(e), filed in behalf of [redacted] has been denied for the following reason(s):

See Attachment

If you desire to appeal this decision, you may do so. Your notice of appeal must be filed with this office at the address at the top of this page within 30 days of the date of this notice. Your appeal must be filed on Form I-290B. A fee of $630.00 is required, payable to U. S. Citizenship and Immigration Services with a check or money order from a bank or other institution located in the United States. If no appeal is filed within the time allowed, this decision will be the final decision in this matter.

In support of your appeal, you may submit a brief or other written statement for consideration by the reviewing authority. You may, if necessary, request additional time to submit a brief. Any brief, written statement, or other evidence not filed with Form I-290B, or any request for additional time for the submission of a brief or other material must be sent directly to:

DHS/USCIS
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

Any request for additional time for the submission of a brief or other statement must be made directly to the Administrative Appeals Office (AAO), and must be accompanied by a written explanation for the need for additional time. An extension of time to file the appeal may not be granted. **The appeal may not be filed directly with the AAO. The appeal must be filed at the address at the top of this page.**

Sincerely,

Donna P. Campagnolo
Acting Director, California Service Center

The petitioner filed Form I-129F, Petition for Alien Fiancé(e), for classification of the beneficiary under section 101(a)(15)(K) of the Immigration and Nationality Act, as the fiancé(e) of a United States citizen.

In order to be eligible for this classification, the parties stated on the petition must be free to conclude a valid marriage in the United States. Section 214(d) of the Act states, in pertinent part:

> ... under the provisions of section 101(a)(15)(K) ... The petition shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties ... are legally able and actually willing to conclude a valid marriage in the United States ...

The record reflects that the petitioner and the beneficiary are of the same sex. The determination of whether a marriage is valid for immigration purposes is not a matter of State law but of Federal law. Under the provisions of section 101(a)(15)(K) the petition shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties are legally able to conclude a valid marriage in the United States.

The United States Congress clarified Federal law concerning recognition of marriage by enacting the Defense of Marriage Act (DOMA), Pub. L. No. 104-199, 110 Stat. 2419 (1996), which provided a statutory definition of "marriage," and of the concomitant term, "spouse." For the petitioner and beneficiary to qualify and conclude a marriage for purposes of Federal law, one partner must be a man, and the other a woman. Id. This definition applies to the construction of any Act of Congress and to any Federal Regulation. Id.

The Board of Immigration Appeals addressed this issue, in Matter of Lovo-Lara, 23 I & N Dec. 746 (BIA 2005), in the context of a Petition for Alien Relative (Form I-130). There, the Board wrote, "[w]e find that the language of section 3(a) of the DOMA, which provides that the word marriage means only a legal union between one man and one woman, a husband and wife, and the word spouse refers only to a person of the opposite sex who is a husband or a wife, is clear on its face. There is no question that a valid marriage can only be one between a man and a woman. Marriages between same-sex couples are clearly excluded." Continuing, the Board noted that, "this interpretation is further supported by the legislative history of the DOMA." See H.R. Rep. No. 104-664, at 2-6 (1996).

Although the requirements of section 214(d) of the Act may require that the parties are able, "to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival," Matter of Lovo-Lara informs that the validity of the marriage involves a two-step analysis. "In order to determine whether a marriage is valid for immigration purposes, the relevant analysis involves determining first whether the marriage is valid under State law and then whether the marriage qualifies under the Act." Matter of Lovo-Lara, 23 I & N Dec. at 748 (quoting Adams v. Howerton, 673 F.2d 1036, 1038 (9th Cir. 1982)). As discussed, the DOMA precludes the validity of a same-sex marriage for the purposes of federal immigration law.

Consequently, the petitioner will not be able to conclude a valid marriage for the purposes of Federal immigration law within ninety days after the same-sex alien fiancé(e) arrives in the United States. As such, the petitioner has not established eligibility for the benefit sought within the meaning of section 101(a)(15)(K) of the Act. Therefore, the petition is denied.