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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
NLLB, 3rd Floor  
Washington, D.C. 20536

Public Copy



File: [Redacted] Office: VERMONT SERVICE CENTER Date: 01 OCT 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER:  
  
SELF-REPRESENTED

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. 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 the Philippines, as the fiancé(e) 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 petition after determining that the beneficiary was not legally able to conclude a valid marriage. On appeal, the petitioner submits a letter from the beneficiary's divorce attorney in the Philippines.

Section 214(d) of the Act, 8 U.S.C. 1184(d) states in pertinent part that a fiancée 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 bonafide 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...

The director denied the petition because although the petitioner submitted evidence that the beneficiary had filed for divorce, the petitioner did not submit evidence that the beneficiary's divorce had been granted by the time the petition was filed. On appeal, the petitioner submits a July 7, 2000 letter from the beneficiary's divorce attorney. The attorney states that he expects the court will grant the beneficiary's divorce petition sometime in September of 2000.

8 C.F.R 103.2(b)(12) states:

*Effect where evidence submitted in response to a request does not establish eligibility at the time of filing. An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the petition was filed.*

The Service may not approve the instant petition because at the time the petition was filed in November of 1999, the beneficiary was not divorced from her spouse, Carlos Tabangcura. The beneficiary did not petition the court for a divorce from her spouse until April of 2000, five months after the petition was

filed; therefore, the beneficiary was not legally able to conclude a valid marriage with the petitioner in November of 1999. In Matter of Souza, 14 I&N Dec. 1 (Reg. Comm. 1972), the Board held that both the petitioner and the beneficiary must be unmarried at the time the petition is filed.

As the denial of the instant petition does not prejudice the filing of another I-129F petition, the petitioner may file a new I-129 petition in the beneficiary's behalf once the beneficiary is legally able to conclude a valid marriage. If a new petition is filed, the petitioner should submit documentary evidence that he and the beneficiary met in person within two years before the date of filing the new petition. Acceptable documentary evidence includes, but is not limited to, photographs of the petitioner and the beneficiary together that indicate the date(s) and place(s) of their meeting, copies of the petitioner's travel itinerary, and a copy of the petitioner's airline ticket receipt. Without documentary evidence that clearly establishes that the petitioner and the beneficiary met in person during the requisite two-year period, the petition may not be approved unless the director grants a waiver of such a requirement.

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.