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U.S. Department of Justice

Immigration and Naturalization Service

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

Public Copy



File: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

OCT 04 2001

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

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the California 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 People's Republic of China, 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 statement and a copy of his final divorce decree, which is already included in the record.

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 record contains a copy of a *Judgment of Divorce Nisi* as well as a copy of a *Certificate of Divorce Absolute*. Both documents pertain to the petitioner's divorce from his former spouse.

According to the *Judgment of Divorce Nisi*, the petitioner was granted a provisional judgment of divorce on October 6, 2000, approximately one month prior to the filing of the I-129F petition on November 8, 2000. The *Judgment* clearly states that it will become final "after the expiration of ninety days from the entry of this judgement." According to the *Certificate of Divorce Absolute*, the *Judgment* did, in fact, become final 90-days later on January 8, 2001. The *Certificate* indicates that "[a]fter a judgment of divorce has become absolute, either party may marry again as if the other were dead."

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.*

Although the petitioner had been issued a *Judgment of Divorce Nisi* prior to the filing of the petition, this *Judgement* did not enable the petitioner to enter into a valid marriage with the beneficiary at the time the petition was filed. Not until the court issued the *Certificate of Divorce Absolute* on January 8, 2001, two months after the filing of the petition, was the petitioner legally able to marry again. 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 now that the petitioner is legally able to conclude a valid marriage with the beneficiary. 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.