



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 05 034 51580

Office: VERMONT SERVICE CENTER

Date: **NOV 28 2005**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, as the fiancée 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 petitioner's previous marriage had not been legally terminated at the time the petition was filed. *Decision of the Director*, dated March 29, 2005.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

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. . . .

In 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. The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with the Service on November 17, 2004, indicating that he had previously been married twice. He provided documentary evidence of the termination of the second of these marriages, but not the first. Therefore, the evidence of record does not establish that the petitioner was legally able to marry the beneficiary at the time of filing.

On appeal, the petitioner states that he is having difficulty obtaining the necessary documentation to establish that he is divorced from his first wife because of the destruction of many legal documents during the fall of South Vietnam. He asks for additional time in which to submit his appeal.

Subsequent to his appeal, the petitioner provided a Vietnamese-language affirmation from his first wife regarding the dissolution of their marriage, verified by a Vietnamese official from her village. However, this statement is not accompanied by a certified English translation and will, therefore, not be accepted as proof of that the petitioner's first marriage was legally terminated at the time of filing. Any document containing foreign language

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submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3.)

As the petitioner has not submitted adequate documentation to establish that he was legally able to marry the beneficiary at the time of filing, the appeal will be dismissed. However, it is dismissed without prejudice. Once the petitioner is able to document the legal dissolution of his first marriage, he may file a new Form I-129F on the beneficiary's behalf in accordance with the statutory requirements.

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.