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

*D6*

FILE: [REDACTED]  
SRC 05 167 50346

Office: TEXAS SERVICE CENTER

Date: **NOV 30 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 of the Administrative Appeals Office 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 Acting Director, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 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 acting director denied the petition after determining that the petitioner had not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. *Decision of the Acting Director*, dated May 4, 2005.

Section 101(a)(15)(K) of 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 response to the director's request for evidence and additional information, the petitioner submitted a copy of the petition for divorce filed against the petitioner's former spouse. The submitted documentation indicated that the previous marriage of the petitioner had not yet become final.

On appeal, the petitioner states that he is awaiting the final hearing in regard to his divorce. He states that he expects the hearing to occur within 90 days. *Form I-290B*, dated May 26, 2005. The AAO notes that approximately six months have elapsed since the filing of the Form I-290B Appeal and no further documentation has been received into the record. The appeal is therefore decided based on the record as it currently stands.

The AAO finds that the Form I-129F Petition for Alien Fiancé(e) was filed on February 19, 2004, prior to the termination of the petitioner's previous marriage. The record on appeal, therefore, fails to establish that the petitioner was legally able and actually willing to conclude a valid marriage in the United States *at the time of the filing of the Form I-129F petition*.

The AAO further finds that the record demonstrates that the petitioner and the beneficiary met during April 2004. The petitioner's trip to Hong Kong to meet the beneficiary is evidenced by a copy of a United States passport issued to the petitioner reflecting entry to and exit from Hong Kong during April 2004, copies of boarding passes and airline tickets and one color photograph of the petitioner and the beneficiary together.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on February 19, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on February 19, 2002 and ended on February 19, 2004. The record establishes that the petitioner and the beneficiary met during April 2004; the evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, the appeal will be dismissed.

**Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.**

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.