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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

D6.

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FILE:

EAC 05 184 52901

Office: VERMONT SERVICE CENTER

Date: **JUN 28 2006**

IN RE:

Petitioner:
Beneficiary:

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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting 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 Cambodia, 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 record did not establish that one of the petitioner's previous marriages had been legally terminated at the time the petition was filed. *Decision of the Acting Director*, dated November 2, 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 U.S. Citizenship and Immigration Services (CIS) on June 13, 2005. At that time, he indicated that he had previously been married to a [REDACTED], a marriage for which he subsequently provided a final divorce decree effective as of September 15, 2004. However, as noted by the acting director in her denial, the copy of the 1992 naturalization certificate submitted by the petitioner states that he is a widower, indicating a previous marriage that terminated with the death of a spouse. A review of related CIS records finds that the petitioner's naturalization application (Form N-400) listed two previous spouses, the individual noted on the Form I-129F and a [REDACTED] whom the form indicates died in 1972/73. The N-400 also lists the dates of the petitioner's marriages to [REDACTED] as June 16, 1961 to 1968 and to [REDACTED] as approximately 1969 until her death in 1972/73.

On appeal, the petitioner submits a translated copy of a certified letter from the heads of the Taingkrasiang commune, Santuk district, Kampong Thom province, Cambodia as evidence that his marriage to [REDACTED] was

legally terminated prior to the date of filing. The letter states that the petitioner once lived in the commune and has been divorced from Vony Im since 1971.

The petitioner's submission of the certified letter from the heads of his former village in Cambodia is not sufficient to establish the date on which, nor the manner in which, the petitioner's marriage to Vony Im was terminated. Rather than resolve the inconsistencies noted by the acting director in her denial of the petition, it raises further questions regarding the petitioner's marital status at the time he filed the Form I-129F.¹ Although he has previously claimed and continues to claim on the Form I-290B that he is a widower, the certified letter from his former commune in Cambodia indicates that the referenced marriage ended in divorce. Therefore, the AAO finds the letter from the Taingkrasiang commune leaders to be of little evidentiary value in this proceeding. It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the record does not establish that, on the date of filing, the petitioner was legally free to marry the beneficiary. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. If the petitioner can submit evidence that establishes he is legally free to marry the beneficiary, he may file a new I-129F petition on the beneficiary's behalf in accordance with 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. The petition is denied.

¹ The AAO also notes that the petitioner's submission of evidence regarding his September 15, 2004 divorce from [REDACTED] appears to contradict his statements on the Form N-400. The N-400 indicates that he was divorced from [REDACTED] in 1968, prior to his marriage to [REDACTED].