



U.S. Citizenship
and Immigration
Services

06

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 19 2006
LIN 05 173 53828

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:

[Redacted]

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, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

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 record did not establish that the petitioner's previous marriage had been legally terminated at the time the petition was filed. *Decision of the Acting Director*, dated October 24, 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. . . .

To establish eligibility under section 214(d) of the Act, a petitioner must be legally able to enter into marriage at the time he or she files the Form I-129F. It 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.

In his denial, the director indicated that the petitioner had failed to submit a complete copy of his divorce decree and, therefore, had not established that he was legally free to marry the beneficiary at the time he filed the Form I-129F on her behalf. He also noted that the petitioner had failed to provide the appropriate response to his request for evidence regarding the beneficiary's previous marriages, indicating "NA," when "None" was the response he was instructed to use to indicate that she had not been previously married.

On appeal, the petitioner submits a copy of his divorce decree, which was filed on February 13, 1997. Counsel for the petitioner provided a second copy of the petitioner's decree in a May 17, 2006 mailing. The petitioner's submission of his final divorce decree establishes that as of the date of filing, June 7, 2005, he was no longer married to his previous spouse and was legally able to conclude a valid marriage to the beneficiary. Further, while the petitioner's response to the director's request for evidence concerning the beneficiary's previous

marriages did not use the term indicated by the director, the AAO finds the response he did provide to demonstrate that the beneficiary has not been married previously. There is no requirement in statute or regulation that stipulates the use of a specific vocabulary when filing immigration petitions and applications. Accordingly, the petitioner has overcome the grounds for the director's denial of the petition. The appeal will be sustained and the petition approved.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.