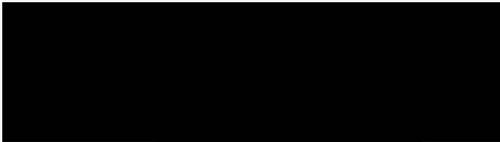




U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



D6

FILE: [REDACTED]  
WAC 06 089 51170

Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2007

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

PETITION: Petition for Alien Fiancé(e) Pursuant to § 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California 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 § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry. . . .

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 . . . [emphasis added].

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. The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on January 26, 2006. The Director denied the petition after determining that the petitioner had failed to submit documentary evidence that he was legally free to marry the beneficiary at the time the petition was filed. *Decision of the Director*, dated August 21, 2006. The Director found that the petitioner's divorce from his February 3, 1993 marriage was not final at the time the petition was filed.

On appeal, the petitioner asserts that his February 3, 1993 marriage was terminated on June 28, 2004. *Form I-290B*. The petitioner further stated that he was unaware that his December 20, 1966 marriage had not been terminated, as the divorce was filed in 1977. *Id.* Unable to find legal records confirming his divorce, the petitioner again filed for divorce and on July 6, 2006 received a final judgment of divorce. *Id.* In support of his assertions, the petitioner submitted copies of his divorce records, dated June 29, 2004 and July 6, 2006. *See Divorce Decree, State of Hawaii, Family Court, Third Circuit, dated June 28, 2004 and filed on June 29, 2004; Final Judgment of Divorce, Superior Court of Guam, dated July 6, 2006.* While the AAO finds the Director erred in concluding that the petitioner's February 3, 1993 marriage was not terminated at the time the Form I-129F was filed, it finds that the petitioner's divorce from his December 20, 1966 marriage was not final until July 6, 2006. As his divorce from his earlier marriage was not final until after the petitioner filed the Form I-129F, he was not legally free to marry at the time the petition was filed. Therefore, the appeal will be dismissed.

The denial of this petition is without prejudice. The petitioner may file a new Form I-129F petition 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.