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U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 03 2007
EAC 06 213 51503

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.

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 sustained.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Morocco, 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). The acting director denied the petition after determining that the petitioner, who had previously been married, failed to establish that he was legally free to marry the beneficiary at the time the petition was filed. The acting director found that the evidence the petitioner submitted to show that he was divorced was insufficient.

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].

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) on July 14, 2006. At that time, he had been divorced from two prior spouses. His first divorce took place on November 26, 1997 in New York, and the record contains the divorce decree from that case. The petitioner was divorced from his second wife on July 31, 2003 in Morocco. The petitioner had previously submitted for the record only the translation of the original divorce decree provided by the Moroccan consulate in New York City. The acting director found that the translation alone did not establish that the petitioner was unmarried at the time he filed the petition. On appeal, however, the petitioner submits a copy of the original court-issued divorce decree written in Arabic. The AAO finds this to be sufficient evidence establishing that the petitioner was divorced as claimed and that he was free to marry the beneficiary on July 14, 2006.

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 this burden, providing evidence of his eligibility to marry the beneficiary at the time he filed the petition. The evidence is sufficient to overcome the acting director's reason for denial.

ORDER: The appeal is sustained, and the petition is approved.