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

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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 13 2007

EAC 06 120 53121

IN RE:

Petitioner:



Beneficiary:

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 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 Ghana, 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 March 20, 2006. On April 18, 2006 the Service issued the petitioner a Notice of Action (Form I-797) requesting that he submit evidence of the legal termination of his marriage under the name [REDACTED]. In response, the petitioner submitted a Petition for Name Change approved on March 3, 2006 changing his name from [REDACTED] to [REDACTED] a Dissolution of Customary Marriage for [REDACTED] issued by the Registrar of Marriages, and a Statutory Declaration confirming the dissolution of this marriage. The director denied the petition after determining that the petitioner had failed to submit documentary evidence that the beneficiary was legally free to marry the petitioner at the time the petition was filed. *Decision of the director*, dated August 3, 2006. The director found that the petitioner had not submitted a decree for dissolution of his marriage issued by a high court, circuit court or district court as requested in the Form I-797 to be in compliance with the U.S. Department of State's Foreign Affairs Manual regarding divorces in Ghana.

On appeal, the petitioner submits a document issued on August 15, 2006 by the district magistrate court in Ghana confirming the dissolution of his customary marriage. *See Dissolution of Customary Marriage, District Magistrate Court, Koforidua-Ghana*, dated August 15, 2006. This document from the district magistrate court in Ghana establishes the dissolution of the petitioner's marriage prior to the filing of the Form I-129F, as it states that the petitioner was free to marry at any time after June 24, 1996.

As the petitioner's divorce was final prior to filing the Form I-129F, he was legally free to marry at the time the petition was filed. Therefore, the appeal will be sustained.

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.