

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

106

OCT 18 2007
OCT 18 2007
OCT 18 2007

FILE:

[REDACTED]
EAC 07 051 50472

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:
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. Wleemann, 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 Peru, as the fiancé 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 December 13, 2006. On the petitioner's Forms I-129F and G-325A, Biographic Information sheet, the petitioner listed that she was previously married to [REDACTED] and [REDACTED]. The original submission of evidence included the termination of the petitioner's marriage to [REDACTED]. In response to a request for evidence to submit proof of the legal termination of her marriage to [REDACTED], the petitioner submitted a copy of her divorce decree to [REDACTED]. The Director denied the petition after determining that the petitioner had failed to submit proof of termination of her previous marriage to Efrain Sanchez prior to the filing of the Form I-129F. *Decision of the Director*, dated March 13, 2007.

On appeal, the petitioner states that when she filled out the Forms I-129F and G-325A, she mistakenly wrote the name of her first husband as [REDACTED] *Form I-290B*. The petitioner explained that the legal name of her first husband was [REDACTED] as it states on the marriage certificate and the decree terminating the marriage. *Id.* The petitioner states that [REDACTED] is also known as [REDACTED] and that she has known him and referred to him by this name for over 40 years. *Statement from the petitioner*, dated March 21, 2007. The petitioner states that she has only been married to and divorced from [REDACTED]. *Id.* The AAO notes that the record includes a marriage certificate and a divorce decree documenting the marriage and divorce of the petitioner to [REDACTED] and that the divorce occurred in 1979. *See marriage certificate and divorce decree*. The record does not include any documentation that the petitioner was married to [REDACTED]. Given the petitioner's explanation that [REDACTED] and [REDACTED] are the same person, and that the petitioner's

[REDACTED]

Page 3

marriage and divorce to [REDACTED] are documented in the record, the AAO finds that the petitioner was divorced prior to her filing of the Form I-129F.

As the petitioner's previous marriages had been legally terminated prior to the filing of the Form I-129F, she 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.