



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

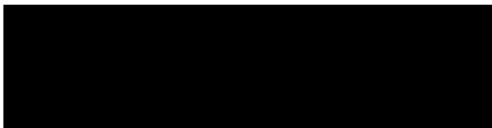
SEP 12 2007

EAC 07 054 51048

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 Brazil, 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 December 18, 2006. The Director denied the petition after determining that the petitioner had failed to submit proof that his previous marriage had been terminated prior to his filing of the Form I-129F.

On appeal, the petitioner states that his divorce from his previous spouse took place on November 14, 2006, prior to his filing of the Form I-129F. *Statement from the petitioner; Final Judgment of Divorce, Superior Court of New Jersey*, filed November 14, 2006. The petitioner stated that the court issuing the divorce decree misspelled his name and that of his previous spouse. The court amended the divorce decree on January 10, 2007 to reflect the correct spelling of the names of the applicant and his former spouse, but made another mistake by indicating that the divorce was final as of the date of amendment. *See Final Judgment of Divorce, Superior Court of New Jersey*, dated January 10, 2007. On February 27, 2007 the petitioner obtained a second amended Judgment of Divorce, which states that it was taken from and compared with the original divorce decree on file as of November 14, 2006. *See Judgment of Divorce, Superior Court Vicinage of Union County, New Jersey*, dated February 27, 2007. As the original final judgment of divorce was issued on November 14, 2006 and the corrected amendment refers to the original divorce decree, the AAO finds that the petitioner was divorced prior to his filing of the Form I-129F.

As the petitioner was legally divorced prior to the filing of 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.