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U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

16



FILE:



WAC 05 227 50738

Office: CALIFORNIA SERVICE CENTER

Date:

APR 22 2008

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.

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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Laos, 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 August 15, 2005. The director denied the petition after determining that the petitioner had failed to submit documentary evidence that demonstrated she was legally free to marry the beneficiary at the time the petition was filed. *Director's Decision*, dated October 31, 2007.

The AAO notes that the petitioner indicates on her Form I-290B that she will be submitting additional evidence to the AAO within 30 days. It has now been over three months and no documentation has been submitted. Thus, the current record will be considered the complete record on appeal.

On appeal, the petitioner asserts that she filed a petition for divorce on October 22, 2007 and that the court is currently processing her petition. *Form I-290B*, dated November 26, 2007. The petitioner submits documentation showing that her petition for dissolution of marriage was filed on October 22, 2007 with the Alameda County Superior Court in California. The record indicates that the petitioner was not divorced at the time of filing and did not file for divorce until after the Form I-129F was filed. Therefore, because the current record reflects that the petitioner was not legally free to marry the beneficiary at the time the petition was filed, the appeal will be dismissed.

The denial of this petition is without prejudice. Once the petitioner's divorce is final, she may file a new 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.