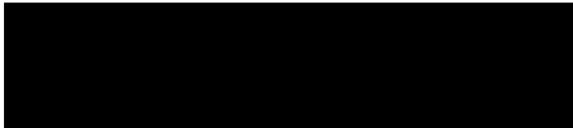




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
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FILE:

[Redacted]
EAC 02 009 53225

Office: VERMONT SERVICE CENTER

Date: **AUG 30 2007**

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:



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 dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, 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].

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services (CIS) on September 20, 2001. The Director initially approved the petition and forwarded it to the U.S. Consulate in Manila. *See Notice of Action*, dated December 31, 2001. On August 9, 2005 CIS reopened the applicant's Form I-129F after learning from the U.S. Consulate in Manila that the beneficiary was married to another individual. *See Notice of Action*, dated August 9, 2005; *Email communication from the Immigrant Visa Correspondence Unit, Consular Section, U.S. Embassy, Manila, Philippines*, dated May 27, 2005. On May 1, 2006 the Director denied the petition after determining that the petitioner had failed to submit documentary evidence that the beneficiary was eligible for the benefit sought. *Decision of the Director*, dated May 1, 2006.

On appeal, the petitioner asserts that the beneficiary filed a petition for annulment of her previous marriage on September 22, 2003. *Form I-290B; Attorney's brief*. The annulment was not granted until February 14, 2006. *Decision of Annulment, Regional Trial Court, Fourth Judicial Region, Branch 17, Cavite City, Philippines*, dated February 14, 2006.

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 beneficiary's previous marriage was not annulled until February 14, 2006. As the beneficiary's annulment was not final until after the petitioner filed the Form I-129F, the beneficiary was not legally free to marry at the time the petition was filed. Therefore, the appeal will be dismissed.

The denial of this petition is without prejudice. The petitioner may file a new Form 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.