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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: VERMONT SERVICE CENTER

Date:

JUL 08 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting 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 China, as the fiancé(e) 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 . . .

In 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 (CIS) on December 11, 2003.

The acting director denied the petition after determining that the petitioner had failed to submit the beneficiary's divorce decree. The acting director noted that the petitioner had submitted a declaration, rather than a final decree, regarding the beneficiary's divorce from her previous husband.

On appeal, the petitioner states that he is submitting a divorce decree; however, he submits the same declaration by the beneficiary that was already on the record. The beneficiary's declaration that she has not been married since her 1999 divorce from her previous husband is insufficient evidence of that divorce. The petitioner must submit a legal document such as a court decree in order to establish that the beneficiary is divorced and is free to marry the petitioner.

Because the petitioner has failed to submit a divorce decree for the beneficiary, the appeal is dismissed and the petition is denied. Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. Once the petitioner obtains a legal divorce decree for the beneficiary, he 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.