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

D6



FILE:  EAC06 229 50096

Office: VERMONT SERVICE CENTER

Date: JUN 07 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:

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 Ghana, 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). The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) on August 4, 2006. The director denied the petition because the petitioner failed to submit a court-issued divorce decree, as requested, to prove that the petitioner was legally free to marry the beneficiary at the time the petition was filed.

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 record reflects that the petitioner was previously married pursuant to Ghanaian customary law on June 24, 1996, and that he divorced his first wife, also pursuant to customary law, on July 19, 2004. On appeal, the petitioner submits a Confirmation of Dissolution of Customary Marriage issued by the registrar of the Circuit Court of Tema, Ghana. The AAO finds that this evidence, together with the Notice of Registration of Dissolution of Customary Marriage previously submitted for the record, establishes that the petitioner was not married at the time he filed the instant petition. Hence, the petitioner has overcome the director's reason for the denial.

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.