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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

DC

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 2007

WAC 06 213 52677

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, 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 Vietnam, 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 . . .

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 June 28, 2006. The Director denied the petition after determining that the petitioner had failed to submit documentary evidence that the petitioner was legally free to marry the beneficiary at the time the petition was filed and that he and the beneficiary had met within the two-year period immediately preceding the filing of the petition. *Decision of the Director*, dated November 20, 2006.

On appeal, the petitioner submits cell phone records and a copy of his divorce decree showing his divorce was finalized on March 5, 2004. *See Agreed Final Decree of Divorce, District Court, Harris County, Texas, 308th Judicial District*, dated March 5, 2004. As the petitioner's divorce was final prior to the June 28, 2006 filing of the Form I-129F, the AAO finds that the petitioner has established that he was legally free to marry the beneficiary at the time the petition was filed. With respect to the two-year meeting requirement, the petitioner stated on his Form I-129F that he met the beneficiary while on vacation in England. *Form I-129F*. The record includes a photocopy of the petitioner's passenger receipt and travel itinerary showing that he was in London on December 15, 2005. *See Air France passenger receipt and travel itinerary*. While the record establishes that the petitioner was in England within the two-year period immediately preceding the filing of the Form I-129F petition, the record does not demonstrate that the beneficiary was also in England during this time and that she met with the petitioner. Examples of documentary evidence to support that the petitioner and beneficiary met during that time may include photocopies of the beneficiary's passport showing she was in England at the same time as the petitioner, airline tickets and travel itineraries for the beneficiary, and photographs of the petitioner and the beneficiary together. The AAO does not find that the petitioner has offered evidence to establish that he and the beneficiary met during the two-year period immediately preceding the filing of the petition, nor has he offered any evidence to demonstrate that compliance with the meeting requirement during the specified

period would have constituted an extreme hardship for him or that such a meeting would have violated the customs of the beneficiary's culture or social practice. 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.