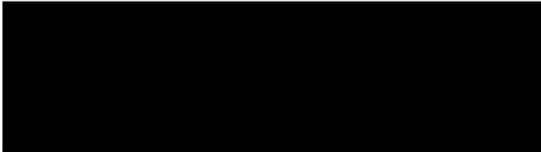


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U.S. Citizenship
and Immigration
Services



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 23 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.

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 citizen of the United States who seeks to classify the beneficiary, a 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). The director denied the petition after determining that the petitioner was not legally free to marry the beneficiary at the time the petition was filed, because the petitioner was still married to another person at that time.

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 (CIS) August 2, 2005. Information in CIS records establishes that the petitioner filed a Form I-130 Petition for Alien Relative for a previous spouse on June 17, 2004; hence, the director requested evidence establishing that the petitioner had terminated his previous marriage prior to petitioning for the instant beneficiary.

In response to the director's request for evidence, the petitioner explained that the U.S. consulate in Manila informed him that his previous spouse was married to someone other than the petitioner; thus, unbeknownst to the petitioner, she was not eligible to conclude a valid marriage with the petitioner at the time he petitioned for her. The record, however, contains no evidence in support of the assertion that the petitioner was not actually married to his previous beneficiary. On appeal, the petitioner submits a Georgia decree of annulment of his marriage to his previous spouse dated March 30, 2006. Although this decree establishes that the petitioner is now eligible to conclude a marriage with the beneficiary, it was issued after he filed the petition. Because the petitioner was unable to conclude a valid marriage in the United States with the beneficiary as of June 17, 2004, as required under § 214(d) of the Act, the instant appeal must be dismissed, and the petition will be denied.

The petitioner should note that pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the instant petition is without prejudice. The petitioner may file a new Form I-129F on the beneficiary's behalf now that he is legally free to conclude a valid marriage in the United States with her. The burden of proof in these proceedings rests solely with the petitioner. *See* § 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.