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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]
EAC 05 068 51430

Office: VERMONT SERVICE CENTER

Date: **DEC 01 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 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 application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a naturalized U.S. citizen who seeks to classify the beneficiary, a native of Tibet, as the fiancé of a U.S. citizen pursuant to section 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 as the petitioner failed to establish that the beneficiary was legally able to marry her due to his marriage to another person at the time the petition was filed. *Decision of the Director*, dated August 11, 2005.

On appeal, the petitioner states that she received a letter from the beneficiary's prior spouse regarding termination of their marriage. *See Form I-290B*, dated September 1, 2005.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

The record reflects that the beneficiary married his prior spouse under Tibetan rites and customs on March 28, 2001. *Beneficiary's Affidavit*, dated March 16, 2005. The beneficiary's prior spouse states that she considers relations with the beneficiary to be terminated and that their union was not legally binding under U.S. law. *Letter from* [REDACTED] dated November 1, 2004.

The Hindu Marriage Act of 1955, Section 3(a) defines "custom" as:

...any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law...

The validity of a marriage is determined by the law of the place where it is contracted or celebrated and if it is valid there, it is valid everywhere. *Matter of H.*, 9 I&N Dec. 640 (BIA 1962). An exception is made when the marriage is contrary to U.S. public policy. *Id.* As the beneficiary's prior marriage is recognized as valid under Indian law, it would be binding under U.S. law as it is not contrary to public policy.

The record includes a letter which states that the marriage of the beneficiary and his prior spouse was dissolved. *Letter from Tibetan Welfare Officer*, dated April 4, 2005. The basis for denial was that the beneficiary was married at the time the petitioner filed the petition and there was insufficient evidence of legal termination of the marriage. No evidence, other than the aforementioned letters, was submitted with the appeal as proof of divorce. The letters do not provide sufficient evidence that the beneficiary's marriage was terminated prior to the filing of the instant petition. The director states that legal termination as evidenced by appropriate documentation by a civil authority must have been accomplished prior to the filing of the petition. *Decision of the Director*, at 2. The AAO also notes that a Buddhist marriage may be dissolved under section 29 of the Hindu Marriage Act of 1955 in accordance with custom, without the intervention of a court, provided that the relevant party proves the existence of the custom and its applicability to him or her. *Matter of Palsang*, 15 I&N Dec. 706 (BIA 1976). The beneficiary has not provided sufficient evidence of divorce, whether in the form of appropriate documentation by a civil authority or in the form of proof of the existence of a divorce custom and its applicability to him.

The record also reflects that the petitioner and beneficiary were married under Tibetan rites and customs on November 20, 2004 and were living as husband and wife. *Beneficiary's Second Affidavit*, dated December 7, 2004. In the event that the beneficiary was legally divorced from his first spouse, he would be considered married to the petitioner and ineligible for a fiancé petition. If the beneficiary was not legally divorced from his prior spouse, then his second marriage would not be considered valid as he would still be married to his prior spouse.

The AAO finds that the petitioner's appeal fails to overcome the grounds of denial. This decision is without prejudice to the filing of a new I-129F petition. The petitioner may file a new I-129F petition, providing that both parties are not married and the petition is filed within two years of meeting the beneficiary in person, or upon becoming eligible for an exemption of the meeting requirement.

ORDER: The appeal is dismissed.