



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 26 2006

IN RE: Petitioner:
Beneficiary: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 India, 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 . . . [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) on October 5, 2005. The director denied the petition after determining that the petitioner had failed to submit documentary evidence that the beneficiary was legally free to marry him at the time the petition was filed, because she was not yet divorced from her previous spouse.

On appeal, the petitioner writes that the beneficiary was married in 1991 and divorced in 2001, and that both events occurred according to Tibetan custom and were not sanctioned by legal conventions. The petitioner states that the beneficiary submitted an affidavit to this effect, but since this was deemed insufficient evidence, she procured a court document dated February 20, 2006.

As the instant petition indicated that the beneficiary had been married to an individual other than the petitioner, it is incumbent on the petitioner to establish that the previous marriage was legally terminated prior to filing the petition. If the beneficiary's previous marriage consisted of traditionally sanctioned cohabitation but was not legally binding, and her divorce was also not legally documented, the petitioner bears the burden of establishing these facts for the record. The record contains no documentation regarding ethnic Tibetan traditional marriages or any evidence contemporaneous with the beneficiary's divorce to establish that it occurred in 2001. In fact, the primary evidence presented regarding this issue, the Indian court document, is from 2006, while the petition was filed in 2005. Hence, based on the evidence of record, the AAO is unable to conclude that the beneficiary was legally free to marry the petitioner at the time the petition was filed.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. The petitioner 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.