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

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 01 2006

WAC 05 231 50675

IN RE: Petitioner:
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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a U.S. citizen who seeks to classify the beneficiary, a native and citizen of Jamaica, 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 after determining that the petitioner failed to establish that she was legally able to marry the beneficiary as she was married to another person at the time the petition was filed. *Decision of the Director*, dated April 18, 2006.

On appeal, the petitioner states that she has been denied for failure to provide marital evidence and she states it is wrong to assume that she was ineligible to marry the second time due to failure to divorce her first husband. *Form I-290B*, dated May 22, 2006.

The record includes, but is not limited to, the petitioner's statement, her two divorce decrees and a copy of the fiancé petition. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

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. . . .

The record reflects that the petitioner has been married twice and that she did not divorce her second husband until February 16, 2006. As she was not unmarried at the time she filed the Form I-129F on August 15, 2005, the petition was denied. Therefore, the basis for denial was not whether the petitioner was divorced to her

first husband at the time she married her second husband as the petitioner contends. The basis for denial was that the petitioner was not free to marry her fiancé at the time she filed her petition, as she was still married to her second husband at that time. The record supports the director's basis for denial of the petition.

This decision is without prejudice to the filing of a new I-129F petition. The petitioner may file a new I-129F petition 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.