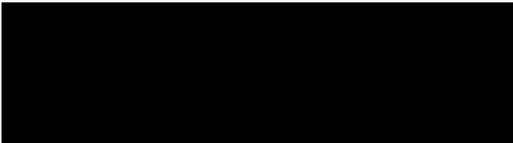




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



106

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 08 2007

WAC 06 105 53004

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 sustained.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Laos, 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 petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) on February 10, 2006. On May 2, 2006, the director requested evidence regarding the circumstances under which the petitioner and beneficiary became acquainted and regarding any personal meeting that took place between them during the period within two years prior to the filing date of the petition. The director also requested further evidence of the beneficiary's divorce from her previous husband. On July 10, 2006, the petitioner submitted evidence of his visit to Laos, photographs taken with the beneficiary, and a copy of the beneficiary's divorce decree that he had previously submitted with the original petition.

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 director denied the petition after concluding that the decree attesting to the beneficiary's divorce was insufficient evidence to establish that the beneficiary was legally free to marry the petitioner. The director found that the document in question did not constitute a divorce decree issued by civil authorities. The AAO, however, notes that the divorce decree, dated May 13, 1998, was issued by the village headman, who is a civil authority. The AAO finds the submitted divorce decree to be valid evidence of the legal effect of the beneficiary's divorce from her previous spouse. It is determined that the beneficiary was legally free to marry the petitioner at the time the petition was filed.

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 met that burden with evidence overcoming the director's decision; thus, the appeal is sustained, and the petition is approved.

ORDER: The appeal is sustained.