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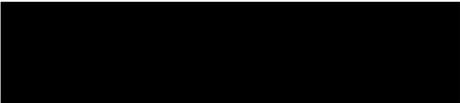
Office: CALIFORNIA SERVICE CENTER

Date: MAR 02 2007

WAC06 138 53005

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 Vietnam, 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).

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 on March 29, 2006. The director denied the petition after determining that the petitioner and beneficiary were married in January 2006 in Vietnam.

On appeal, the petitioner states that it is normal practice in Vietnam for a couple to be called "groom" and "bride" at the traditional wedding, and "husband" and "wife" after the traditional wedding, regardless of the fact that they do not register their marriage with the civil authorities. *Statement from the petitioner*, dated September 7, 2006. The petitioner further declares that although he and the beneficiary were wedded in a traditional Vietnamese ceremony, they are not legally married as they have not registered a marriage with Vietnamese civil authorities in any location, nor have they applied for a marriage certificate in any place. *Id.* In support of his statements, he submits a Vietnamese record verifying the single status of the beneficiary. *See Verification of Singleness record, Vietnam*, dated August 28, 2006. The AAO also observes that on the Form I-129F filed on March 29, 2006, the petitioner stated that he was divorced and the beneficiary was single. *Form I-129F*.

As the petitioner was not legally married to the beneficiary prior to filing the Form I-129F, he was legally free to marry at the time the petition was filed. Therefore, the appeal will be sustained.

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.

ORDER: The appeal is sustained.