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U.S. Department of Homeland Security  
20 Mass. Ave. NW, Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: MAR 09 2007

WAC 06 077 51824

IN RE:

Petitioner:

[REDACTED]

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:

[REDACTED]

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 dismissed.

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).

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].

In 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 January 19, 2006. The petitioner initiated divorce proceedings on June 26, 2006. See *petition of dissolution of marriage*, dated June 26, 2006. The petitioner stated that under California state law, it takes at least six months to finalize a divorce. *Affidavit from the petitioner*, dated July 17, 2006. The Director denied the petition after determining that the petitioner had failed to submit documentary evidence that he was legally free to marry the beneficiary at the time the petition was filed. The Director found that the petitioner's divorce was not final at the time the petition was filed. *Decision of the Director*, dated August 11, 2006.

On appeal, the petitioner states that his divorce proceeding is taking longer than necessary. *Form I-290B*. He requests an additional 60-90 days to submit supporting documents as to the progress of his current divorce proceeding. *Id.* The AAO declines to grant the petitioner an additional 60-90 days to obtain these documents. As he was not legally free to marry the beneficiary at the time the Form I-129F petition was filed, the appeal will be dismissed.

The denial of this petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf in accordance with the statutory requirements. The AAO notes, however, that the petitioner's January 2005 trip to Laos will not satisfy the meeting requirement of section 214(d) of the Act as it will apply to a Form I-129F again filed at a future date. The petitioner will be required to establish that he has met the beneficiary during the two-year period immediately preceding his filing of the petition.

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.