



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]  
WAC 07 004 52008

Office: CALIFORNIA SERVICE CENTER

Date: NOV 02 2007

IN RE: Petitioner: [Redacted]  
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:

[Redacted]

INSTRUCTIONS:

This is the decision 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. Wemmann, 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 Syria, as the fiancée of a United States citizen pursuant to section 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 *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) the court held 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 October 4, 2006. On January 11, 2007 the director requested the petitioner submit the following documentation: evidence of a meeting within the two-year period prior to the date of filing and the petitioner's divorce decree. On February 7, 2007, the petitioner submitted documentation showing that he and the beneficiary had met during the two-year period prior to the date of filing and a copy of a receipt showing that a divorce order was filed on November 8, 2004. The director denied the petition because the petitioner failed to submit a final divorce decree. *Decision of the Director*, dated March 21, 2007.

On appeal, the petitioner submits a copy of his final divorce decree, showing an effective date of November 8, 2004. The AAO notes that the petitioner's divorce decree indicates that the divorce became absolute on November 8, 2004, the date the petitioner filed the divorce order and before he filed the Form I-129F. Therefore, as the petitioner was legally free to marry the beneficiary at the time the petition was filed, 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 now met that burden.

**ORDER:** The appeal is sustained.