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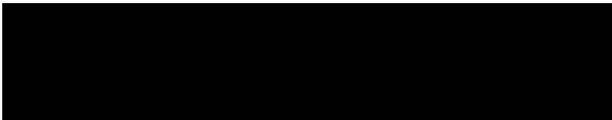
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 19 2008

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

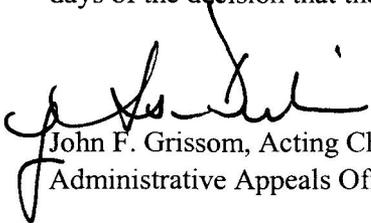
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, 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 director denied the petition because the petitioner failed to submit supporting documents. On appeal, the petitioner submits a copy of his birth certificate, birth registration for a birth abroad, and a divorce decree between him and [REDACTED], who the petitioner lists as a prior spouse on the I-129F 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:

[s]hall 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 January 15, 2008. As stated above, the director denied the petition because the petitioner failed to submit any supporting evidence with his petition. On appeal, the petitioner states, "I'm sending copies of my birth certificate and divorce decree papers. I don't know what else u [sic] need. If anything else is needed please let me know. Thank you."

The petition is not approvable. Although the petitioner has established that he is a U.S. citizen and although he claims to have met the beneficiary in person within the two years immediately preceding the filing of the petition¹, the petitioner has failed to establish that he is legally able to conclude a valid marriage with the beneficiary. On the I-129F Petition, the petitioner indicates that, in addition to his marriage to [REDACTED] he was married to [REDACTED]. The petitioner states on the I-129F Petition that his marriage to [REDACTED] ended on May 11, 2007; however, the petitioner did not submit any documentation of the termination of that marriage. Accordingly, the AAO cannot find that

¹ The AAO notes that the petitioner's claim of having met the beneficiary from November 5, 2007 through November 18, 2007 is not supported by any documentary evidence. As the AAO is dismissing the appeal on another ground, however, this issue will not be discussed further.

the petitioner was legally able to conclude a valid marriage with the beneficiary when he filed the petition. The appeal must, therefore, be dismissed.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that he should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his home.

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. The petition is denied.