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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 03 2008

WAC 07 118 50320

IN RE:

Petitioner:

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.

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 fiancé 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 12, 2007. The director denied the petition after determining that the divorce certificate submitted regarding the beneficiary's previous marriage was insufficient to terminate that marriage. *Director's Decision*, dated June 26, 2007.

On appeal, the petitioner asserts that beneficiary's previous marriage was a traditional marriage and no marriage certificate was issued by local or state authorities. *Form I-290B*, dated July 5, 2007. She states that because this was a traditional marriage, the divorce decree is issued and stamped by the head of the village. She states that a case is only sent to the local district or state government if the head of the village cannot solve the issue. The AAO notes that the State Department Foreign Affairs Manual states that in Laos a divorce decree must be issued by the court in the district where the couple is resident for a divorce to be final. A divorce certificate issued by a village or district official that is not a member of the court is not sufficient. Divorce documents can be obtained from the district government in which they were originally issued. *Foreign Affairs Manual, Volume 19, Chapter 9, Part IV*, updated March 20, 2007.

The petitioner has submitted no evidence, including the affidavits of individuals familiar with the circumstances of the beneficiary's first marriage, to establish that this marriage was a traditional marriage or that traditional marriages maybe terminated in the manner she asserts. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the petitioner has not established that the beneficiary was legally free to marry her at the time the petition was filed and the appeal will be dismissed.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. The petitioner may file a new I-129F petition on the beneficiary's behalf in accordance with the statutory requirements. 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.