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U.S. Citizenship
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Services

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FILE:

[REDACTED]
EAC 06 043 50972

Office: VERMONT SERVICE CENTER

JUN 25 2008

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, Vermont 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 the Philippines, as the fiancé(e) 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 November 25, 2005. The director denied the petition after determining that the beneficiary was not free to marry at the time the petition was filed. *Director's Decision*, dated December 7, 2007.

In his decision, the director's notes that the beneficiary's Biographic Information Form, G-325A states that the her former spouse died on July 4, 1997, but that no evidence of his death was submitted.

On appeal, the petitioner asserts that the claim that the beneficiary's former husband was deceased was a mistake. *Form I-290B*, dated December 21, 2007. The petitioner submits evidence that the beneficiary's previous marriage was annulled on December 3, 2007. *Final Decree of Declaration of Absolute Nullity of Marriage*, dated December 3, 2007. The AAO notes that the petition was filed on November 25, 2005 and that at that time, the beneficiary was not free to marry. Thus, the appeal must be dismissed.

The denial of this petition is without prejudice. Now that the beneficiary is free to marry, 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.