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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

D6

FILE:

Office: VERMONT SERVICE CENTER

Date: **FEB 08 2011**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, 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).

The director denied the nonimmigrant visa petition because the petitioner failed to establish that he and the beneficiary were free to marry at the time the petition was filed, as he did not submit evidence of the legal termination of the beneficiary's prior marriages to [REDACTED] and [REDACTED]. Specifically, the director found that the petitioner submitted the beneficiary's licenses to divorce rather than the requisite certificates of divorce.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

Subject to subsections (d) and (p) of section 214, an alien who -

(i) 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 admission.

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), 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 2 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 . . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on August 25, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between August 25, 2007 and August 25, 2009.

When he filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner submitted boarding passes, an itinerary, a hotel receipt, and photographs as evidence of his trip to China to visit the beneficiary in April 2009.

On November 3, 2009, the director issued a request for evidence (RFE), requesting that the petitioner submit evidence of the legal termination of the beneficiary's prior marriages.

In response to the RFE, the petitioner submitted the following: a certificate of divorce [REDACTED], and translation, reissued to the beneficiary on May 31, 2009, by the [REDACTED] (with a special Marriage Registration seal), registered on March 9, 1994, terminating the marriage of the beneficiary and [REDACTED] a [REDACTED] and

translation, from the [REDACTED] confirming the authenticity of the reissued divorce certificate [REDACTED] from the [REDACTED] certifying that the English translation of the [REDACTED] is in conformity with the Chinese original; a certificate of divorce ([REDACTED]), and translation, reissued to the beneficiary on September 20, 2005, by the [REDACTED] (with a special Marriage Registration seal), registered on March 12, 1996, terminating the marriage of the beneficiary and [REDACTED] and translation, from the [REDACTED] confirming the authenticity of the reissued divorce certificate [REDACTED] from the [REDACTED] certifying that the English translation of the [REDACTED] is in conformity with the Chinese original.

The director denied the petition because the petitioner failed to establish that the beneficiary was free to marry him at the time the petition was filed, as he had not submitted evidence of the legal termination of the beneficiary's prior marriages to [REDACTED] and [REDACTED]. Specifically, the director found that the petitioner submitted the beneficiary's licenses to divorce rather than the requisite certificates of divorce.

On appeal, counsel states, in part, that the petition was denied in error, as the beneficiary's divorces were obtained through the Divorce through Agreement method, pursuant to Article 31 of the Marriage Law of the [REDACTED] which is used when both parties desire the divorce. Counsel also states that the Divorce through Agreement is applied for at the Marriage Registration Authority, not the People's Court, and the certificates of divorce are issued by the Marriage Registration Authority. As supporting documentation, counsel submits: copies of the beneficiary's applications of divorce registration, and translations; a Certificate of Having No Record of Marriage Registration for the beneficiary, a translation, and related notarial certificates; and copies of the documents that were submitted in response to the director's RFE.

The Marriage Law of the People's Republic of China, Chapter IV Divorce, Article 31 states:

Divorce shall be granted if husband and wife both desire it. Both parties shall apply to the marriage registration office for divorce. The marriage registration office, after clearly establishing that divorce is desired by both parties and that appropriate arrangements have been made for the care of any children and the disposition of property, shall issue the divorce certificates.

The director denied the nonimmigrant visa petition because the petitioner submitted the beneficiary's licenses to divorce rather than her certificates of divorce.

On appeal, counsel states that the requisite divorce certificates were previously submitted. The AAO agrees. As discussed above, the petitioner submitted certificates of divorce to show that her marriages to [REDACTED] and [REDACTED] were legally terminated. The petitioner also submitted the related notarial certificates attesting to authenticity of the certificates and the related seals. Thus, the petitioner has overcome the objection of the director. A review of the record in its entirety finds that the petitioner has submitted all of the required documentation, as described in the instructions to the I-129F petition.

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Thus, the AAO finds the petitioner to have overcome the basis for the director's denial of the instant petition. Accordingly, the AAO will sustain the petitioner's appeal and approve 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 met that burden.

**ORDER:** The appeal is sustained. The petition is approved.