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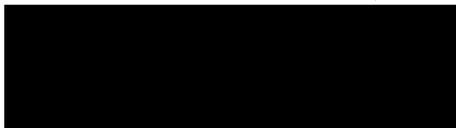
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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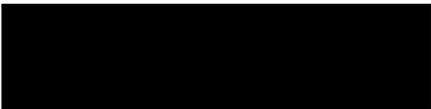
Office: CALIFORNIA SERVICE CENTER

Date: DEC 27 2007

WAC 07 026 53980

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, California 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 China, 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).

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 6, 2006. The director denied the petition after determining that the petitioner had failed to submit a final divorce decree showing that he was legally free to marry the beneficiary at the time the petition was filed.

The petitioner has submitted a copy of a Support Order Abstract relating to his Stipulated Judgment of Dissolution of Marriage, dated July 20, 1998, as well as copies of Supplemental Judgments Modifying Stipulated Judgment of Dissolution of Marriage, dated March 31, 2005 and February 2, 2007. The petitioner states that no other documentation is available concerning his divorce. *Form I-290B*, dated April 12, 2007. The petitioner indicates on the Form I-290B that he will send a brief and/or further evidence to the AAO within 30 days. The AAO notes that it has now been over five months since the petitioner's appeal was filed and no documentation has been received. Thus, the AAO will consider the current record the complete record.

The AAO finds that the evidence submitted by the petitioner does not establish the effective date of the petitioner's final judgment of divorce. Although the petitioner asserts that he has submitted all available documentation of his divorce, the record contains a letter from the petitioner's family law attorney, which states that he has requested a certified copy of the petitioner's original divorce decree from the Washington County Circuit Court and will forward the decree to the petitioner upon receipt. *Letter from [REDACTED]*, dated April 10, 2007. The record does not contain this final divorce decree. Therefore, the record does not establish that the beneficiary was legally free to marry the beneficiary 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 Form I-12F petition on the beneficiary's behalf in accordance with 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.