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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE  Office: California Service Center

Date:

FEB 28 2003

IN RE: Petitioner:
Beneficiary:



APPLICATION: Petition for Alien Fiancé(e) under Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: Self-represented

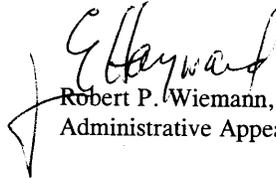
INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, California Service Center, and is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native of Nigeria and naturalized citizen of the United States. The beneficiary is a native and citizen of Nigeria. The acting director found that the beneficiary had not legally terminated his marriage and, therefore, was unable to enter into a valid marriage in the United States.

On appeal, the applicant discusses various aspects of the petitioning process and states that it was his understanding that his divorce had been final since 1993. After discovering that it was not final, he filed a new set of papers in October 2001 and the divorce became final on May 22, 2002.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

(i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;

(ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972), that at the time a fiancée visa petition is filed, both the petitioner and the beneficiary must be unmarried and free to validly marry.

As of June 8, 2001, the date the petitioner filed his Petition for Alien Fiancée (Form I-129F) in this case, the petitioner was neither unmarried nor free to validly marry. The record now reflects that the petitioner's dissolution of marriage became final on May 22, 2002, and after the petition was filed. Therefore, the appeal must be dismissed.

This decision is made without prejudice to the filing of a new visa petition on behalf of the beneficiary. At the time of that filing, the petitioner should establish that both the petitioner and the beneficiary are unmarried and free to validly marry.

ORDER: The appeal is dismissed.