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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: [Redacted] Office: Vermont Service Center

Date:

MAR 15 2001

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER: Self-represented

Identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy.

INSTRUCTIONS:

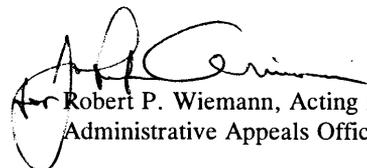
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States, who is presently widowed. The beneficiary is a native and citizen of Uganda. The director denied the petition after determining that the petitioner and the beneficiary were already married.

On appeal, the petitioner states that he was not married to the beneficiary on May 21, 2000. The petitioner explains that an introduction ceremony was held on that date as part of their tribal customs. The petitioner states that on May 21, 2000, he was in New York.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiancee" as:

An alien who is the fiancee or fiance 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....

The Petition for Alien Fiance(e) (Form I-129F) was filed on July 25, 2000. The petitioner states in his letter dated July 21, 2000 that "on May 21, 2000, I did a customary marriage in Uganda, Africa. Miss [REDACTED] is now my wife to help me raise my daughter."

The affidavit dated July 5, 2000 by [REDACTED] states "that on the 21st day of May 2000, I formally got married to [REDACTED] a resident of New York, USA...That I, make this affidavit to verify and certify my marriage to [REDACTED] and in support of an application for grant of visa and or entry to the United States of America to enable me cohabit with my above said husband."

The record also contains a certificate of customary marriage which states "this marriage was celebrated between us [REDACTED]... [REDACTED]." The petitioner and his spouse's signatures appear on this form and were witnessed by two different individuals. The date of marriage is May 21, 2000.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

The petitioner's assertion that he never got married to Miss [REDACTED] on May 21, 2000 and that it was only an introduction

ceremony held on that date is insufficient since it has not been substantiated by credible evidence. The petitioner has not submitted documentary evidence to show that the marriage does not exist. The marriage certificate states that " I...in the registrar of Masaka Marriage District, do hereby certify that this is a true copy of the entry of a marriage as shown above." The certificate is dated July 3, 2000. Therefore, it appears that the beneficiary and petitioner have already entered into a valid marriage. Consequently, the beneficiary is statutorily ineligible for the status sought.

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. This decision is, nevertheless, without prejudice to the filing of a new petition (Form I-130) to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act, along with the required documentary evidence and fee.

**ORDER:** The appeal is dismissed.