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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File:

Office: NEBRASKA SERVICE CENTER Date:

MAY 30 2001

IN RE: Petitioner:  
Beneficiary:



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:



Identifying info 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

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reopen. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be withdrawn and the petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native of Libya and citizen of Great Britain, as the fiance(e) of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K).

The director denied the petition because the petitioner failed to submit evidence that the beneficiary was legally able to conclude a valid marriage.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiance(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 fiancée 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 bonafide 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 sole issue to be examined is whether the beneficiary is legally able to marry the petitioner. The beneficiary states that she is the widow of Yousef Salih Kherbish. According to evidence in the record, Yousef Salih Kherbish was assassinated in Rome, Italy in 1987 presumably upon the orders of the Libyan President. Mr. Kherbish was the alleged leader of the National Front for the Salvation of Libya (NFSL).

The petition was denied because the petitioner did not present a copy of Mr. Kherbish's death certificate. Rather, the petitioner submitted a newspaper article about the assassination, a letter from an official of the NFSL, and a copy of a photograph that was allegedly of Mr. Kherbish.



On appeal, counsel submits a death certificate for Mr. Kherbish issued by the Egyptian authorities, an article about the assassination that appeared in the Italian newspaper, "LaStampa," and a July 15, 1987 press release from Amnesty International that discusses the assassination of Mr. Kherbish. Counsel maintains that these three pieces of evidence establish that the beneficiary was legally able to conclude a valid marriage at the time the petition was filed in September of 1999.

Evidence presented on appeal establishes that the beneficiary was legally able to conclude a valid marriage with the petitioner at the time the petition was filed. According to evidence in the record, the beneficiary's former husband, Yousef Salih Kherbish was buried in Egypt in July 1987. Therefore, the Egyptian authorities' issuance of a death certificate for Mr. Kherbish is reasonable. Additionally, Amnesty International has documented the assassination of Mr. Kherbish in Rome, Italy, which is consistent with the beneficiary's claims regarding the date and place of her former husband's death. Accordingly, the petitioner has overcome the basis of the director's and the Associate Commissioner's objections.

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.