



U.S. Department of Justice

Immigration and Naturalization Service

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

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prevent clearly unwarranted
invasion of personal privacy



28 NOV 2001

File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date:

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:

Public Copy

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center denied the nonimmigrant visa petition, and the matter is now before the Associate Commissioner for Examinations on appeal. 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 Canada, as the fiancé(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 after determining that the petitioner and the beneficiary were currently married. On appeal, the petitioner submits a statement and another copy of his record of marriage.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), states that an alien may be classified as a fiancé(e) if he or she:

- (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; or
- (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 * * *

The director denied the petition because at the time of the petitioner's adjudication, the petitioner had already married the beneficiary. The director found that this marriage precluded the beneficiary from meeting the statutory definition of a fiancée.

On appeal, the petitioner states that he and the beneficiary were married in Arizona on November 15, 2000 after he filed the petition on November 9, 2000. According to the petitioner, the beneficiary would still be eligible for this nonimmigrant visa classification, as they had not been married at the time the petition was filed.

8 C.F.R 103.2(b)(12) states that an application or petition shall be denied when the evidence fails to establish filing eligibility at the time the petition was filed. 8 C.F.R. 214.1(a)(3) further states that every nonimmigrant alien who applies for admission to

the United States shall establish that he or she is admissible to the United States. An alien may be admissible to the United States as the fiancé(e) of a United States citizen if, at the time of the alien's admission, he or she meets the statutory definition of fiancé(e) found in section 101(a)(15)(K) of the Act, which is cited above.

Although the beneficiary met the definition of fiancée found in section 101(a)(15)(K)(i) of the Act at the time the petition was filed, she would not have fit either definition of fiancée found at section 101(a)(15)(K) at the time of her admission to the United States.

Once the marriage between the petitioner and the beneficiary occurred, the beneficiary no longer met the statutory definition of a fiancée found in section 101(a)(15)(K)(i) of the Act because she (1) was a spouse, not a fiancée, of a United States citizen, and (2) would not be seeking to enter the United States solely to conclude a valid marriage with the petitioner.

Additionally, the beneficiary would not be eligible for classification as a fiancée under section 101(a)(15)(K)(ii) of the Act because the petitioner did not present any evidence that his spouse (the beneficiary) 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.

The petitioner's marriage to the beneficiary subsequent to the filing of the petition had a direct bearing on the beneficiary's eligibility for the benefit sought. The director was reasonable in considering these changed circumstances in his adjudication of the petition.

If the petitioner would like the beneficiary to be classified as 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, the petitioner should file a Petition for Alien Relative (Form I-130) with the Service. The Form I-130 with its accompanying instructions may be obtained from a local Immigration and Naturalization Service (INS) office, through the INS's official website at www.ins.usdoj.gov, or by phone at 1-800-870-3676.

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.