



U.S. Department of Justice
Immigration and Naturalization Service

DC

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:

FEB 27 2003

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: SELF-REPRESENTED

identifying data deleted to prevent unwarranted invasion of personal privacy

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, 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 sustained. The decision of the director will be withdrawn and the application will be approved.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Ukraine, 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 after determining that the petitioner and the beneficiary were already married.

Section 101(a)(15)(K) of the Act 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 fiance(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].

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on May 29, 2001. In support of the petition, the petitioner submitted a statement and evidence that he and the beneficiary participated in a religious marriage ceremony in the Ukraine on September 3, 2000.

The director determined that the parties were already married and denied the petition, noting the following customary registration practices throughout the world:

The two principle religions of the Ukraine are Orthodox and Ukrainian Catholic, both Christian religions. In countries that are primarily Christian, religious marriage ceremonies are given the same status as civil ceremonies inasfar as registration is concerned, although a religious ceremony will have an ecclesiastical registration and a civil registration and a civil ceremony will have only a civil registration. The civil

registration would be accomplished by the officiant according to the registration requirements of the Ukraine.

The director did not cite a reference for this determination.

On appeal, the petitioner submits a document, with translation, dated November 7, 2001, from the Department of Justice of Odessa province entitled "Marriage Status Certification." The document states that a search of the archives reveals no record of a marriage registration for the beneficiary during the time period from April 12, 1999 through November 7, 2001.

In the instant case, the record contains sufficient documentary evidence to establish that although the petitioner and beneficiary participated in a religious marriage ceremony, they are not legally married in that the "marriage" was not registered with the civil authorities in the Ukraine. Therefore, the appeal will be sustained. The decision of the director will be withdrawn and the application will be approved.

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 decision of the director is withdrawn. The application is approved.