

PUBLIC COPY

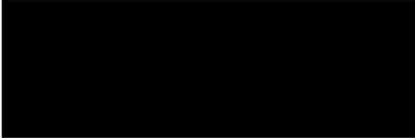
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security

Citizenship and Immigration Services

D6

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: [Redacted] Office: California Service Center
(WAC 01 199 50797 relates)

Date: NOV 05 2003

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

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

ON BEHALF OF PETITIONER:



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 Citizenship and Immigration Services (CIS) 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 Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The decision of the director will be withdrawn and the prior approval of the petition will be affirmed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of India, as the fiancée 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).

Section 101(a)(15)(K) of the Act defines "fiancé(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 fiancé(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. . . .

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) on April 23, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on April 23, 1999 and ended on April 23, 2001.

The director initially approved the petition on July 6, 2001. The petition was then forwarded to the American Embassy in New Delhi, India for processing and issuance of a non-immigrant visa to the beneficiary. The Embassy returned the petition to the director for reconsideration on December 20, 2002, based on a consular conclusion that no bona fide relationship exists between the petitioner and the beneficiary.

On May 2, 2003, the director reopened the case on his own motion. The director notified the applicant that he intended to deny the petition based on the information received from the American Embassy in New Delhi. The petitioner was afforded 30 days in which to submit a rebuttal to the director's notice.

On June 3, 2002, the petitioner submitted a three-page hand-written letter in response to the director's notice. The petitioner

explained the circumstances of his prior marriage and how and why he had become engaged to the beneficiary only eight months after having obtained a divorce from his first spouse. He stated, in effect, that his first marriage had been intolerable for several years, he was a lonely old man, and wanted to find a partner. He stated that he met the beneficiary, who had been a widow for twenty years, while in India to attend a marriage ceremony with friends and family from January 2001 through February 7, 2001. He asked the beneficiary to marry him and the couple traveled 1,500 miles in order to receive blessings from the holiest of Sikh temples in another Indian state.

On June 20, 2003, the director denied the petition, finding that the petitioner had failed to submit new evidence to substantiate his relationship with the beneficiary.

On appeal, counsel for the petitioner submits a letter stating that all the requirements for the filing of the petition have been met.

After a careful review of the record, we agree with counsel. The consular memorandum contained in the record of proceeding indicates the following reasons for returning the petition to CIS for review:

The petitioner divorced his first wife on August 9, 2000.

The beneficiary presented photographs of only the two of them, taken in a Gurudwara (Sikh temple), as proof of their engagement.

There was no engagement ceremony, which the memorandum indicates is highly unusual in Indian society.

The beneficiary could not present any correspondence between herself and the petitioner.

The petitioner had not visited the beneficiary since their engagement.

Seventeen months had elapsed since the petition was approved.

There is no objective documentary evidence contained in the record to establish that the petitioner and beneficiary have not complied with the requirements contained in sections 101(15)(K) and 214(d) of the Act. Therefore, the decision of the director will be withdrawn and the approval of the petition will be affirmed.

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 dated June 20, 2003 is withdrawn. The July 6, 2001 approval of the petition is affirmed.