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U.S. Department of Homeland Security
Citizenship and Immigration Services

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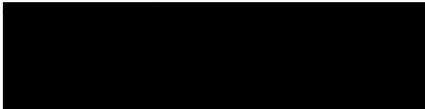
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File [redacted] Office: California Service Center
(WAC 00 184 50175 relates)

Date: OCT 23 2003

IN RE: Petitioner:
Beneficiary:



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



PUBLIC COPY

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. . . .

It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. The record indicates that the petition was filed on June 1, 2000.

The director initially approved the petition on July 12, 2000. The petition was then forwarded to the consulate of the American Embassy in New Delhi, India for processing and issuance of a non-immigrant visa to the beneficiary. The consulate returned the petition to the director for review and revocation on October 17, 2000, based on a consular investigation that concluded the beneficiary was already married to someone else.

On January 30, 2003, the director issued a Notice of Intent to Deny (NID) to the petitioner, stating that prior approval of the petition would be vacated based on information received from the American Embassy that the beneficiary was already married. The petitioner was afforded 30 days from the date of the NID to offer evidence in opposition to the proposed denial.

In response to that notice, the petitioner submitted a letter dated February 6, 2003, stating that the information given by some of the

villagers to the consular investigators is completely false and that the beneficiary is still unmarried. The petitioner also submitted an affidavit from the beneficiary's mother, dated March 27, 2003, stating that the beneficiary is unmarried.

On May 13, 2003, the director denied the petition, finding that the petitioner had failed to establish eligibility for the benefit sought.¹

On appeal, counsel for the petitioner submits a brief, an affidavit from the petitioner, and two affidavits from the beneficiary. In his affidavit, the petitioner discusses the circumstances concerning his engagement to the beneficiary and filing the petition on her behalf. He concludes that because both he and the beneficiary strictly adhere to their customs and honor, it is inconceivable that the beneficiary has ever been married. In affidavits dated July 15, 2003, the beneficiary asserts that she is "still unmarried."

Counsel argues that the consular investigation was based on unsupported statements. Counsel also argues that the director failed to balance the information submitted by the petitioner in response to the NID against the conclusions of the consular investigation.

After a careful review of the record, the AAO finds counsel's arguments persuasive. The consular investigation is based on information supplied by one unnamed villager. There is no information provided on the alleged husband or on the villager's source of knowledge regarding the beneficiary's alleged marriage. There is no objective documentary evidence contained in the record to establish that the beneficiary is married to another person. 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 May 13, 2003 is withdrawn. The July 12, 2000 approval of the petition is affirmed.

¹ The director notes in the denial that "the petitioner and beneficiary were already married" at the time the petition was filed. This appears to be a misinterpretation of the consular report that merely concluded that the beneficiary "is married to someone already."