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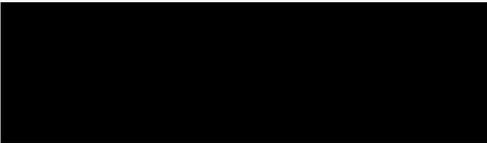
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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



**U.S. Citizenship  
and Immigration  
Services**



FILE: [Redacted]  
MSC02 219 60845

Office: MISSOURI SERVICE CENTER

Date: **APR 05 2004**

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: SELF-REPRESENTED

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Missouri Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the child of a nonimmigrant spouse 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 beneficiary did not qualify for designation as a K-4 nonimmigrant. *See* Decision of the Director, dated August 30, 2002.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

(i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;

(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; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(K)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(K)(iii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F.

The petitioner asserts that the clear intent of the Legal Immigration Family Equity (LIFE) Act is to reunite the family of an American citizen awaiting the availability of an immigrant visa and that the decision of the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] violates the equal protection clause of the United States Constitution. *See In Re: I-129F Petition for [REDACTED] Jr. as K-4*, dated September 16, 2002. While the AAO recognizes the purposes of the LIFE Act, the AAO also adopts a construction of the pertinent statute garnered from the plain meaning of its language. Section 101(a)(15)(K)(iii) of the Act clearly provides for nonimmigrant classification of minor children of aliens qualifying under sections 101(a)(15)(K)(i) and (ii) of the Act. The statute does not make provision for the minor child of the petitioner. The beneficiary in the current application is not the minor child of either the fiancée or spouse of the petitioner.

Further, the petitioner contends that section 101(a)(15)(K)(iii) of the Act violates the beneficiary's equal protection under the law in violation of the Constitution. *Id.* at 5. The petitioner states, "[W]e submit that it could not have been the intention of the LIFE ACT [sic] to deprive the children of the American citizen petitioner of the privilege of a K-4 visa simply because there is no K-3 recipient parent." *Id.* The AAO finds no other reasonable construction of the above-cited statute than the one argued against by the petitioner. The AAO notes that the petitioner provides no support for his assertions and does not explain how the CIS interpretation of the statute violates the beneficiary's equal protection rights. Further, the petitioner does not

interpretation of the statute violates the beneficiary's equal protection rights. Further, the petitioner does not establish that the beneficiary, a citizen and resident of the Philippines who is not present in the United States, enjoys the rights and privileges afforded under the United States Constitution.

The appeal will be dismissed because the decision of the director was correct; the beneficiary cannot be classified as a K-4 nonimmigrant pursuant to section 101(a)(15)(K)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(K)(iii), because the petition does not include application for status by the fiancée or spouse of the petitioner from whom the beneficiary may obtain derivative status as required.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.