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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

D6

FILE: [Redacted]
SRC 03 171 51581

Office: TEXAS SERVICE CENTER Date: AUG 05 2005

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 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 Director, Texas Service Center approved the nonimmigrant visa petition but subsequently revoked that approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The director's revocation of the approved petition will be withdrawn.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of The Philippines, 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).

The director revoked the nonimmigrant petition after determining that the petitioner had failed to submit sufficient evidence to establish that he and the beneficiary had a "bonafide relationship." The director cited concerns raised by the beneficiary's interview with a consular officer at the U.S. Embassy in Manila, The Philippines, subsequent to Citizenship and Immigration Services' (CIS) approval of the petition benefiting her. *Decision of the Director*, dated October 4, 2004.

The issue before the AAO is whether the petitioner has overcome the grounds for revocation.

Section 101(a)(15)(K) of the Immigration and Nationality Act (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.

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 Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on June 3, 2003. It was approved by the director on October 27, 2003, but returned to CIS following the beneficiary's interview at the U.S. Embassy in Manila on January 30, 2004. The Department of State consular officer who conducted the interview determined that the beneficiary was not eligible to receive a visa because her relationship to the petitioner was not "bonafide" and she, therefore, did not have "the required family relationship or civil status to qualify for the immigration category sought."

The director issued a notice of intent to deny, requiring the petitioner to submit evidence within 30 days to establish his relationship with the beneficiary. The petitioner responded to the director's request on August 11,

2004, submitting a Form I-290B appeal, which was appropriately rejected by the director. The materials provided by the petitioner to establish the genuineness of his relationship with the beneficiary included: telephone records; used airline tickets; testimonial letters; and electronic mail exchanges between the petitioner and beneficiary.

On October 4, 2004, the director revoked approval of the Form I-129, stating that, while the petitioner had responded to his notice of intent to deny, he had failed to prove, beyond a reasonable doubt, that his relationship with the beneficiary was bonafide. The director specifically noted that the beneficiary's inability to answer questions about the beneficiary or their relationship during her consular interview called the relationship into question.

On appeal, the petitioner submits a statement, which includes his concerns about the nature of the interview conducted with the beneficiary at the U.S. embassy in Manila and his inability to understand the type of information needed by the director to establish his relationship to the beneficiary. The petitioner also provides a letter from the beneficiary attesting to her relationship to the petitioner, a letter of support from his minister, his February 1, 2003 letter to the beneficiary's mother seeking her approval of their marriage, e mail exchanges with the beneficiary, various types of documentation establishing his presence in The Philippines in September 2004, Philippine telephone bills from 2003 and 2004 showing the beneficiary's calls to him in the United States; a receipt for the purchase of wedding rings, money transfers to the beneficiary, his airline reservation and electronic ticket receipt for a flight to The Philippines on September 2, 2004, a letter confirming his presence at a Philippine hotel on September 11, 2004, an exchange of letters and cards with the beneficiary during 2003-2004, and photographs with the beneficiary, dated by the petitioner as having been taken in September 2004.

Section 214(d) of the Act states that CIS *shall* approve the Form I-129F when a petitioner submits evidence to establish that he/she and the beneficiary have met within the two-year period immediately the filing of the Form I-129F, have a bonafide intention to marry and are legally able and willing to marry within 90 days of the beneficiary's arrival in the United States. In revoking the instant petition, the director appears to have imposed an additional requirement on the petitioner – establishing the genuineness of his relationship to the beneficiary. However, no such requirement exists for the approval of a Form I-129F and the AAO finds the director to have erred in imposing it. While section 214(d) of the Act stipulates that the petitioner must establish that he and the beneficiary have a bonafide intention to marry, this language is not synonymous with a requirement that the petitioner establish the closeness of their relationship. The AAO has found nothing in the record to indicate the petitioner and beneficiary do not intend to marry within 90 days of the beneficiary's arrival in the United States.

In reaching its decision, the AAO notes the concerns expressed by the consular officer and, subsequently, the director regarding the beneficiary's lack of knowledge concerning the petitioner. However, as just noted, section 214(d) of the Act does not require the beneficiary to be knowledgeable regarding the petitioner or his history, nor that CIS evaluate the closeness of the fiancé(e) relationship before approving the petitioner's Form I-129F. Instead, it allows for the approval of the Form I-129F when the petitioner and beneficiary have met no more than once during the two-year period preceding the date of filing. Accordingly, the reservations expressed by the consular officer and the director are not probative for the purposes of these proceedings.

The director's revocation of the instant petition is based solely on the petitioner's failure to submit sufficient evidence to establish the genuineness of his relationship to the beneficiary. As the director erred in imposing such a requirement on the petitioner, the AAO finds the petitioner to have overcome the basis for the director's

revocation of the instant petition. Accordingly, the AAO will sustain the petitioner's appeal and withdraw the director's revocation of the petition.

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 sustained that burden.

ORDER: The appeal is sustained. The revocation is withdrawn. The petition is approved.