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U.S. Citizenship
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Services

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FILE:

[Redacted]
LIN 04 232 57295

Office: NEBRASKA SERVICE CENTER

Date: OCT 25 2005

IN RE:

Petitioner:
Beneficiary:

[Redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to § 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, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The decision will be withdrawn, and the appeal will be remanded to the service center director for entry of a new decision.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Mexico, as the fiancé of a United States citizen pursuant to § 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 is inadmissible to the United States and is therefore unable to comply with § 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), which 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

.....

The AAO notes that the issue of inadmissibility, that is, whether the applicant is allowed to enter the United States, is a separate determination from eligibility for a fiancé visa. The director denied the petition based on a determination regarding inadmissibility. The instant record is remanded to the director in order for him to review the evidence as it relates to the regulatory requirements for eligibility for the fiancé visa. The director shall then render a new decision notwithstanding the beneficiary's possible inadmissibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.

ORDER: The matter is remanded for action as noted above.