



U.S. Citizenship
and Immigration
Services

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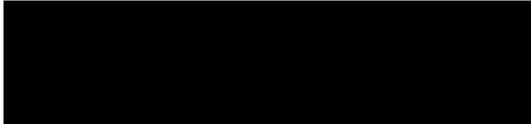
Office: NEBRASKA SERVICE CENTER

Date: OCT 25 2005

LIN 03 225 53760 (I-129F)
LIN 04 193 50714 (I-290B)

IN RE:

Petitioner:
Beneficiary:



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 filed on July 21, 2003 was denied on May 25, 2004 by the Director, Nebraska Service Center. This denial is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed as moot, as the record contains a separate, approved nonimmigrant visa petition.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Great Britain, 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 petitioner and the beneficiary were already married; there was evidence that the beneficiary was still married to another woman; and the beneficiary was inadmissible to the United States. On appeal, the petitioner states that if she is obligated to leave the United States due to the denial of the beneficiary's fiance visa, her elderly patients will suffer extreme hardship.

The appeal is moot, however, because the [REDACTED] contains a Petition for Alien Fiancé(e) Form I-129F (MSC 04 174 19546) filed on March 22, 2004 and approved by the National Benefits Center Assistant Director on March 21, 2005. The AAO notes that the entire record, including the petitioner's and beneficiary's marriage certificate, was not available to the assistant director for consideration prior to approval. Therefore, it does not appear that the assistant director was aware that the petitioner and beneficiary are already married. Because the parties are already married, the beneficiary cannot be classified as the fiancé of a U.S. citizen pursuant to § 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), but he may be eligible for classification as a K-3 nonimmigrant. 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)(ii) 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 regulations at 8 C.F.R. § 214.2(k)(7) require that a Form I-130 Petition for Alien Relative be approved *prior* to the filing of a Form I-129F petition on behalf of the beneficiary. The record does not contain evidence that the petitioner has filed a Form I-130 on the beneficiary's behalf. Nevertheless, given the approval of the subsequently filed fiance petition, this appeal is moot and will be dismissed.

ORDER: The appeal is dismissed as moot.