



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

FILE: [REDACTED]
SRC 04 159 52423

Office: TEXAS SERVICE CENTER Date: APR 13 2006

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:

[REDACTED]

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 reopened the proceeding. She vacated her prior decision and then denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, 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 denied the nonimmigrant petition after determining that the petitioner had failed to submit sufficient evidence to establish the authenticity of his relationship to the beneficiary. The director's decision was, in part, based on concerns raised in connection with the beneficiary's interview at the U.S. consulate in Ho Chi Minh City, Vietnam, subsequent to Citizenship and Immigration Services' (CIS) approval of the petition benefiting her. *Decision of the Director*, dated September 15, 2005.

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 (CIS) on May 25, 2004. It was approved by the director on August 9, 2004, but returned to CIS following the beneficiary's interview at the U.S. consulate in Ho Chi Minh City in March 2005. In connection with the beneficiary's interview, a Department of State consular officer spoke, by telephone, with the petitioner's mother who informed him that the petitioner was still married to his previous spouse and lived with her. Concluding that the petitioner had entered into a sham divorce for the purposes of immigration fraud, the overseas post returned the petition to CIS for review and possible revocation.

The director issued a notice of intent to deny, requiring the petitioner to submit evidence within 30 days to establish the bona fides of his relationship to the beneficiary. The counsel for the petitioner responded to the director's request on September 7, 2005, providing photographs of the petitioner's and beneficiary's engagement

reception, records of the petitioner's telephone calls to Vietnam, evidence of the petitioner's travel to Vietnam, documentation of money transfers to the beneficiary; a copy of the divorce petition filed by the petitioner in August 2001; and a June 10, 2005 statement signed by the petitioner's mother recanting the statements she made the Department of State officer.

On September 15, 2005, the director denied the Form I-129, continuing to find substantial reason to doubt the authenticity of the petitioner's relationship to the beneficiary. On appeal, counsel reviews the evidence provided by the petitioner to establish his separation and divorce from his previous wife, as well as his residence with his mother.

The AAO finds the record to establish that the petitioner initiated divorce proceedings against his first wife prior to meeting the beneficiary and to have been legally divorced from his first wife as of May 2004. It does not, however, find this evidence, sufficient to overcome the statements made by the petitioner's mother to the Department of State regarding her son's place of residence. Neither does it find the June 10, 2005 statement signed by the petitioner's mother or the several letters submitted by the petitioner's friends to be proof of the petitioner's living arrangements following his separation and divorce. The AAO notes that the petitioner has failed to submit any independent evidence to establish his place of residence, e.g., income tax returns, employment-related documents and/or voting registration records covering the period in question. Without such evidence, the record does not demonstrate that the original statements made by the petitioner's mother regarding her son's place of residence were, for whatever reason, incorrect.

Based on the record's failure to effectively address the derogatory information initially provided by the petitioner's mother, the petitioner has not established that he is not only legally able to conclude a valid marriage within 90 days of the beneficiary's arrival in the United States, but willing to do so, as required for the approval of a fiancée petition under the requirements at section 214(d) of the Act, 8 U.S.C. § 1184(d).

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 appeal is dismissed. The petition is denied.