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U.S. Citizenship  
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: APR 25 2007  
LIN 04 261 52414

IN RE: Petitioner: [REDACTED]  
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 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center initially approved the nonimmigrant visa petition. He subsequently reopened the proceeding, vacating his prior decision and denying the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

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 § 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 a fiancé(e) relationship with the beneficiary. The director cited concerns raised by the beneficiary's interview with a consular officer at the U.S. consulate in Ho Chi Minh City, Vietnam, subsequent to Citizenship and Immigration Services' (CIS) approval of the fiancé(e) petition.

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 September 24, 2004. The director approved it on December 29, 2004; however, the case was reopened following the beneficiary's interview at the U.S. consulate in Ho Chi Minh City on June 27, 2005. The Department of State officer who conducted the interview determined that the beneficiary was not eligible to receive a fiancée visa because the relationship with the petitioner was not *bona fide*. This conclusion was based on the fact that the petitioner and beneficiary became engaged three days after their first in-person meeting. The Department of State memorandum dated September 7, 2005 also notes that the petitioner wrote in a letter that he and the beneficiary did not decide to get married until after he returned to the United States following their first meeting. The AAO has reviewed the entire record and has not found the letter referenced in the September 7, 2005 memorandum.

The director issued a notice of intent to deny, requiring the petitioner to submit evidence within 60 days to support and clarify the nature of his relationship to the beneficiary. The petitioner did not respond to the director's request, explaining on appeal that he did not have enough time to gather the evidence.

On June 23, 2006, the director denied the Form I-129, due to the petitioner's failure to reply to the Notice of Intent to Deny. On appeal, the petitioner submits numerous photographs showing himself and the beneficiary in different locations, airline tickets as evidence of his three trips to Vietnam to see the beneficiary, and telephone records showing his telephone calls to the beneficiary during several different periods.

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 preceding the filing of the Form I-129F, have a bona fide intention to marry and are legally able and willing to marry within 90 days of the beneficiary's arrival in the United States. The director appears to have based his denial on the petitioner's failure to establish he had a close personal relationship with the beneficiary at the time of their consular interview. 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 §214(d) of the Act stipulates that the petitioner must establish that he and the beneficiary have a bona fide intention to marry, this language is not synonymous with a requirement that the petitioner establish the closeness of the relationship. The reservations expressed by the consular officer and the director are not probative for the purposes of these proceedings. 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.

The director's denial of the instant petition appears to be 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 denial of the instant petition. Accordingly, the AAO will sustain the petitioner's appeal and approve 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 petition is approved.