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U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 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 § 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 Manila, Philippines, subsequent to Citizenship and Immigration Services' (CIS) approval of the petition benefiting her.

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 March 7, 2005. The director approved the petition on April 18, 2005, but the U.S. Department of State returned the petition to CIS following the beneficiary's interview at the U.S. consulate in Manila on September 6, 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 beneficiary's apparent lack of knowledge regarding facts about the petitioner's past, as well as insufficient evidence supporting the closeness of their relationship.

The director issued a notice of intent to deny, requiring the petitioner to submit evidence within 30 days to explain the weak responses provided to the State Department officer and to clarify the nature of his relationship to the beneficiary. The petitioner did not respond to the director's request; hence, the petition was denied.

On appeal, the petitioner provides evidence of two visits he made to the beneficiary in 2004 and 2006, evidence showing continuing communication between himself and the beneficiary through text-messaging, and a photo that the petitioner states was taken of himself and the beneficiary during their last visit together in 2006. The petitioner also submits evidence of the termination of his prior marriages.

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 bonafide intention to marry and are legally able and willing to marry within 90 days of the beneficiary's arrival in the United States. The Department of State's interview of the beneficiary raised questions regarding the level of intimacy between the petitioner and the beneficiary at the time of the latter's consular interview. However, the approval of a Form I-129F does not depend on the level of closeness between the two parties, and the AAO finds the director to have erred in imposing it. While § 214(d) of the Act requires the petitioner to 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, § 214(d) of the Act does not require the beneficiary to be knowledgeable regarding the petitioner or his history, or 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, and may never have met previously. Accordingly, the reservations expressed by the consular officer and the director are not probative for the purposes of these proceedings.

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 bona fides 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.