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U.S. Citizenship
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Services

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FEB 02 2007

FILE: [REDACTED]
LIN 05 134 52444

Office: NEBRASKA SERVICE CENTER

Date:

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The acting director, Nebraska Service Center approved the nonimmigrant visa petition but subsequently revoked that approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The acting director's revocation of the approved petition will be withdrawn.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ethiopia, 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).

On October 14, 2005 the acting director cited concerns raised by the beneficiary's interview with a consular officer at the U.S. Embassy in Addis Ababa, Ethiopia, subsequent to Citizenship and Immigration Services' (CIS) approval of the petition benefiting her. *Decision of the acting director, dated October 14, 2005.* The acting director provided the petitioner with an opportunity to provide documentary evidence to support his petition and to establish that he intended to conclude a valid marriage within the 90 days upon the admission of the beneficiary to the United States. *Id.* On November 14, 2005 the petitioner submitted a letter to CIS, addressing the acting director's concerns. *Letter written by the petitioner, dated November 17, 2005.* On December 23, 2005 the acting director revoked the nonimmigrant petition after determining that the petitioner had failed to timely submit sufficient evidence. *Decision of the acting director, dated December 23, 2005.* On appeal, the petitioner submitted a letter, again stating his intent to marry the beneficiary. *Letter written by the petitioner, dated January 17, 2006.*

The AAO finds that the acting director's decision dated December 23, 2005 is in error, as the petitioner complied with the timely submission of documentation, providing a letter on November 17, 2005 in which he stated that he and the beneficiary have a strong relationship and plan to marry as soon as possible. *See letter written by the petitioner, dated November 17, 2005.*

Section 214(d) of the Immigration and Nationality Act requires that the parties have previously met in person within two years before the dated 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, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person. The AAO notes that the record includes a photograph of the petitioner and beneficiary together along with a statement by the petitioner that he met the beneficiary in May 2004, within the two years preceding the March 31, 2005 filing date of the Form I-129F. According to the Form G-325A, neither the petitioner nor the beneficiary was previously married. Additionally, the revocation memo written by the Vice Consul of the U.S. Embassy in Addis Ababa, Ethiopia noted concerns about the legitimacy of the relationship between the petitioner and the beneficiary, but did not raise any issue regarding the failure to have met within two years or being free to marry. The AAO will address whether the petitioner has overcome the grounds for revocation, as the record demonstrates that the petitioner and the beneficiary met within the two years of filing the Form I-129F and both were free to marry.

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. . . .

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 immediately 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. In revoking the instant petition, the acting director appears to have imposed an additional requirement on the petitioner – establishing the genuineness of his relationship to the beneficiary. 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 section 214(d) of the Act stipulates that the petitioner must 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.

The AAO notes the concerns expressed by the consular officer and, subsequently, the acting director regarding the beneficiary's lack of a close relationship to the petitioner. However, as just noted, section 214(d) of the Act does not require the beneficiary to be knowledgeable regarding the petitioner or her history, nor 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 acting director are not probative for the purposes of these proceedings.

The acting director's revocation of the instant petition is based on the petitioner's failure to timely submit sufficient evidence to establish the genuineness of his relationship to the beneficiary. As the acting director erred in finding that the petitioner failed to submit documentation and erred in imposing such a requirement on the petitioner, the AAO finds the petitioner to have overcome the basis for the acting director's revocation of the instant petition. Accordingly, the AAO will sustain the petitioner's appeal and withdraw the acting director's revocation of 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 revocation is withdrawn. The petition is approved.