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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **SEP 10 2007**  
WAC 06 130 51794

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

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 petition after determining that the record did not establish that the petitioner had complied with the requirements under the International Marriage Broker Regulation Act (IMBRA) of 2005, Pub. L. No. 109-162 dated January 5, 2006. *Decision of the Director*, dated September 27, 2006.

A petitioner, who applies for benefits on behalf of a beneficiary, must meet the requirements under section 8 C.F.R. § 103.2(b)(1), which states in pertinent part:

An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation...

On January 5, 2006, the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006), 8 U.S.C. § 1375a. Title VII of VAWA 2005 is entitled "Protection of Battered and Trafficked Immigrants," and contains Subtitle D, "International Marriage Broker Regulation" (IMBRA). IMBRA provides that a petitioner for a K nonimmigrant visa for an alien fiancé(e) (K-1) or alien spouse (K-3) must submit with his or her Form I-129F information on any criminal convictions of the petitioner for any of the following "specified crimes":

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes.
- Crimes relating to a controlled substance or alcohol where the petitioner has been convicted on at least three occasions and where such crimes did not arise from a single act.

If the petitioner indicates that he or she has been convicted by a court or by a military tribunal of one of the specified crimes or Citizenship and Immigration Services (CIS) ascertains through relevant background checks that the petitioner has been convicted, the petitioner will be required to submit certified copies of all court and police records showing the charges and dispositions for every such conviction. This is required even if the petitioner's records were sealed or otherwise cleared.

IMBRA imposes limitations on the number of petitions a petitioner for a K nonimmigrant visa for an alien fiancé(e) (K-1) may file or have approved. If the petitioner has filed two or more K-1 visa petitions at any time in the past, or previously had a K-1 visa petition approved within the two-year period preceding the filing of the

current petition, the petitioner must request a waiver. These limitations do not apply to petitioners for a K nonimmigrant visa for an alien spouse (K-3).

A discretionary waiver is available to waive the applicable time and/or numerical limitations if justification exists, except where the petitioner has a history of violent criminal offenses against a person or persons. Factors considered in the discretionary waiver include, but are not limited to:

- Whether unusual circumstances exist (e.g. death or incapacity of prior beneficiary(ies));
- Whether the petitioner appears to have a history of domestic violence; and
- Whether it appears the petitioner has a pattern of filing multiple petitions for different beneficiaries at the same time, of filing and withdrawing petitions, or obtaining approvals of petitions every few years.

If the petitioner has a history of violent offenses, the filing limitations may not be waived unless extraordinary circumstances exist in the petitioner's case.

IMBRA requires that a waiver must be approved if the petitioner can establish that he or she:

- Was battered or subjected to extreme cruelty by his or her spouse, parent, or adult child at the time he or she committed the violent offense(s), and
  - Was not the primary perpetrator of violence in the relationship;
  - Was acting in self-defense;
  - Violated a protection order intended for his/her protection; or
  - Committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime committed and the petitioner having been battered or subjected to extreme cruelty.

The provisions of IMBRA apply to all petitions filed on or after March 6, 2006.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on March 16, 2006. At the time of filing, the petitioner did not submit evidence to establish the fiancé(e) relationship as mandated by the International Marriage Broker Regulation Act or section 101(a)(15)(K)(i) of the Immigration and Nationality Act.

On appeal, the petitioner declares through a sworn statement that he met the beneficiary through his younger brother. *Statement from the petitioner*, dated October 7, 2006. Counsel asserts that the petitioner has not committed, been arrested for, or been convicted of any crimes while living in the United States. *Form I-290B and attachment*. In support of this assertion, the petitioner submits a letter from the Sheriff's Department Headquarters, County of Los Angeles noting that the petitioner does not have a criminal record. *See letter, Sheriff's Department Headquarters, County of Los Angeles*, dated October 4, 2006. The petitioner also submits a signed and dated copy of the IMBRA Form in which he indicates that he has not been convicted of any of the specified crimes. *See signed IMBRA Form*, dated March 22, 2007.<sup>1</sup>

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<sup>1</sup> The AAO notes that the petitioner made several attempts to determine the status of his case, including notifying CIS

The AAO finds that the petitioner has submitted evidence to establish the fiancé(e) relationship as mandated by the International Marriage Broker Regulation Act and pursuant to 101(a)(15)(K)(i) of the Immigration and Nationality Act. The AAO also notes that the record includes copies of the petitioner's airline tickets and boarding passes showing travel to Vietnam in January 2006, thus establishing compliance with having met the beneficiary within two years of filing the Form I-129F. Therefore, the appeal will be sustained.

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 sustained.

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that he had never received a copy of the IMBRA Form. The AAO forwarded a copy of the form to the applicant through his attorney. It was immediately completed and returned. The AAO does not find that the petitioner was attempting to circumvent the law by not completing the IMBRA Form.