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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 03 2004

WAC 02 032 52061

IN RE: Petitioner: [redacted]
Beneficiary:

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 of the Administrative Appeals Office 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 nonimmigrant visa petition was denied by the Acting 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 Uganda, 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 acting director denied the petition after determining that the petitioner and the beneficiary were married at the time the petition was filed and, therefore, the petitioner failed to demonstrate a bona fide intention to marry as required by section 214(d) of the Act. The acting director denied the petition accordingly. *Decision of the Acting Director*, dated June 2, 2002.

Section 101(a)(15)(K) of 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 regulations at 8 C.F.R. § 204.2(a)(iii)(F)(2) provide specific guidelines on evidence that must be provided to support the applicant's contention that he is petitioning for a spouse. The regulations state:

> (2) Evidence for petition for a spouse. . . . A petition submitted on behalf of a spouse must be accompanied by . . . a certificate of marriage issued by civil authorities . . .

On appeal, counsel states that the acting director's decision contradicts a prior Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] decision regarding the petitioner's Form I-730 application. In that adjudication, the petitioner was denied approval to have his spouse and family join him in the United States because the proffered marriage certificate was deemed unacceptable under CIS regulations. Counsel contends that if the marriage certificate was determined to be unacceptable in adjudicating the Form I-730, the same marriage certificate cannot be deemed to constitute evidence of a valid marriage in

adjudicating the Form I-129F petition. Counsel asserts that the petitioner and the beneficiary are not legally married and are able to conclude a valid marriage in the United States. *Appeal*, dated June 13, 2002.

The AAO finds that the acting director erred in interpreting the proffered marriage certificate as valid evidence of a marriage between the petitioner and the beneficiary. The petitioner has submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.