U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 25 2004
SRC 03 250 50730

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The decision of the director will be withdrawn and the application remanded for further consideration.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, 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 petitioner and the beneficiary were already married and, therefore, did not have a "bona fide" intent to marry as required by section 214(d) of the Act. *Decision of the Director*, dated February 5, 2004.

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 director determined that the petitioner and the beneficiary were married on February 12, 2003 in China, before the filing of the Form I-129F, Petition for Alien Fiancé(e), on September 16, 2003.

On appeal, counsel states that the petitioner filed a Form I-130, Petition for Alien Relative, together with the Form I-129F petition as required for a K-3 visa. *Letter from Benjamin E. Mbonu, Esq.*, dated February 25, 2004.

8 C.F.R. § 214.2(k)(7) provides, in part:

> To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(k)(ii) of the Act, the alien spouse must be the

> beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F . . .

The AAO notes that the beneficiary *may* be eligible to apply for classification as a K-3 nonimmigrant. If the beneficiary seeks to be classified as a K-3 nonimmigrant, the regulations at 8 C.F.R. § 214.2(k)(7) require that a Form I-130, Petition for Alien Relative, be filed prior to the proper filing of a Form I-129F petition on behalf of the beneficiary. The AAO notes that the record evidences receipt by Citizenship and Immigration Services of a Form I-130 on behalf of the beneficiary on September 16, 2003. *Form I-797C*, dated September 17, 2003.

The appeal, therefore, will be remanded to the director for adjudication of the Form I-130 petition and further action consistent with the present decision. If the new decision on the Form I-129F petition is adverse to the petitioner, the decision shall be certified to the AAO for review.

ORDER: The decision of the director is withdrawn and the application is remanded to the director for further consideration consistent with the present decision.