**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529

**U.S. Citizenship and Immigration Services**



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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 07 2009

EAC 04 053 53828

IN RE: Petitioner:
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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION**: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the matter remanded to the director for further action consistent with this decision.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, as the K-3 spouse 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 finding that the petitioner and beneficiary were married on November 18, 2003. He stated that because the petitioner and beneficiary were married, the beneficiary could not be classified as a fiancé for immigration purposes. *Decision of the Director,* dated August 9, 2007.

Section 101(a)(15)(k)(i) of the Act, 8 U.S.C. § 1101(a)(15)(k)(i), allows for the admission of:

> An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission . . . .

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiance(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 2 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, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person . . . .

The record reflects that the petition was filed with the service center on January 20, 2004. On August 12, 2004, the petition was approved and forwarded to the Department of State for consular processing. The AAO notes that, as of the date of filing, the petitioner and beneficiary were married and the petitioner had filed a Form I-130, Petition for Alien Relative, with U.S. Citizenship and Immigration Services (USCIS).

On August 9, 2007, the director reconsidered his approval of the Form I-129F, denying it after finding that the petitioner and beneficiary were married and the beneficiary unable to benefit from a fiancé(e) petition. On appeal, the petitioner states that she is seeking K-3 status for the beneficiary and previously filed a Form I-130 on the beneficiary's behalf.

The AAO notes that the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) has amended the language of section 101(a)(15)(k) of the Act to allow U.S. citizens to file Form I-129F

fiancé(e) petitions for their spouses if they have already filed Form I-130 alien relative petitions on their behalf.

Section 101(a)(15)(k)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(k)(ii), provides for the K-3 admission of an alien who:

> (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 1151(b)(2)(A)(i) of this title that was filed under section 1154 of this title 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 . . . .

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....

Accordingly, the director erred in basing his August 9, 2007 denial of the petitioner's Form I-129F on her marriage to the beneficiary.

The petitioner, on August 7, 2006, filed a second Form I-130 on the beneficiary's behalf, followed by a second Form I-129F. This second Form I-129F has been denied based on the denial of the second Form I-130. Although the record appears to indicate that the Form I-130 filed on December 16, 2003 prior to the petitioner's submission of the instant Form I-129F remains pending before USCIS, the AAO notes that the petitioner's second Form I-130 was denied for her failure to establish a bona fide marital relationship with the beneficiary, thereby raising questions regarding the beneficiary's eligibility for K-3 status. Accordingly, the AAO will withdraw the director's decision, but will remand the matter to the director for further consideration in light of the questions raised by the record in regard to the beneficiary's eligibility for K-3 status. If the new decision is adverse to the petitioner, the decision shall be certified to the AAO for review.

**ORDER:** The director's decision is withdrawn and the matter remanded to the director for further action consistent with the present decision.