

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

85

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 18 2011

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The AAO's previous decision will be withdrawn and the petition will be approved.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated January 7, 2011, only certain facts will be repeated as necessary here. The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Colombia, as the fiancé(e) of a United States citizen pursuant to § 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 because the petitioner failed to submit evidence to support his claim that he merited a favorable exercise of discretion regarding his request for a waiver of the limitations against filing a fiancée petition within two years of filing a previously approved fiancée petition, pursuant to section 214(d)(2)(B) of the Act.

On appeal, the petitioner submitted a statement explaining why his request for a waiver should be approved. The petitioner provided evidence to show that he had emailed the NVC Inquiry and the Immigrant Visa Section in Bogota, Colombia, various times to request the cancellation of another fiancée visa petition that he had previously filed on behalf of [REDACTED] and he also provided a copy of an email message sent from the Immigrant Visa Section in Bogota, Colombia, notifying him that on February 16, 2010, the visa petition filed on behalf of [REDACTED] was returned to the NVC for cancellation. With this evidence, the petitioner overcame the basis for the director's denial. The AAO dismissed the appeal, however, because of an unexplained inconsistency in the record, namely that, in the "Affidavit of Intent to Marry of Alien Fiancé," signed by the beneficiary on March 11, 2010, the beneficiary stated that she was aware that the petitioner "HAS been convicted by court of law (civil or criminal) for any of the following crimes: Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking." Her statement was inconsistent with counsel's claim that the petitioner had no criminal background and the petitioner's claim in his "Waiver Affidavit" submitted on appeal that he had "no criminal history with regard to the 'specified crimes' under IMBRA."

On motion, counsel states, in part, that the beneficiary was confused about the charges against the petitioner in her previous Affidavit of Intent to Marry and incorrectly indicated that the petitioner had been convicted of a domestic violence offense. As supporting documentation, counsel submits the following: an affidavit from the petitioner stating that he was never convicted of any of the crimes listed under the International Marriage Broker Regulation (IMBRA); an affidavit from the beneficiary stating that she now understands that the petitioner was not convicted of any charges and that the charges against him were actually dismissed; a copy of the "Motion to Dismiss and Order" from the State of Arizona, dismissing the domestic violence charge against the petitioner; a copy of the misdemeanor complaint against the petitioner; a copy of the plea agreement amended charge; and proof of the petitioner's completion of domestic violence counseling.

On motion, the petitioner submits all of the required documentation, as described in the instructions to the I-129F petition. The petitioner also demonstrates that he merits a favorable exercise of discretion to waive the filing limitations imposed by IMBRA. Thus, the AAO finds the petitioner to have overcome the basis for the director's denial of the instant petition and the AAO's dismissal of the

subsequent appeal. Accordingly, the AAO will grant the petitioner's motion and withdraw its prior decision. The petition is approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The motion is granted. The AAO's previous decision, dated January 7, 2011, is withdrawn. The petition is approved.