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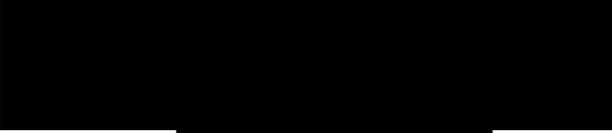
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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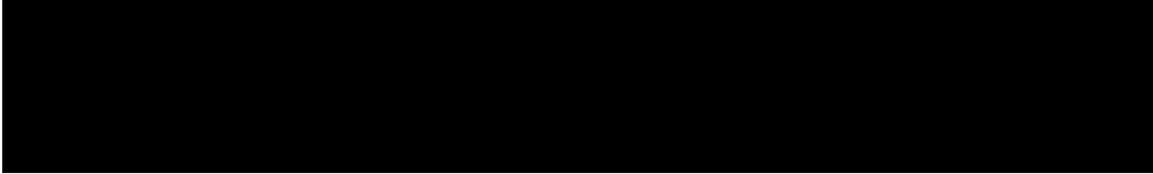


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 04 2008
EAC 07 014 50957

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:



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, Vermont 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 Nigeria, as the fiancé 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 nonimmigrant petition after determining that the petitioner had failed to submit sufficient evidence to establish that she and the beneficiary had a “bonafide relationship.” The director cited concerns raised by the beneficiary’s interview with a consular officer at the U.S. Embassy in London, United Kingdom, in connection with a previous Petition for Alien Fiancé(e) (Form I-129F) submitted by the petitioner on behalf of the beneficiary. *Decision of the Director*, dated January 31, 2007.

Section 101(a)(15)(K) of the Immigration and Nationality Act (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 petitioner filed a Form I-129F with Citizenship and Immigration Services on December 6, 2004. It was approved by the director on February 23, 2005, but returned to CIS following the beneficiary’s interview at the U.S. Embassy in London on September 12, 2005. The Department of State consular officer who conducted the interview determined that the beneficiary was not eligible to receive a visa because his relationship to the petitioner was not “bonafide.” The consular officer then concluded that the beneficiary had entered into the relationship with the petitioner for the sole purpose of obtaining an immigration benefit and recommended that the petitioner’s Form I-129F approval be revoked.

The approval of the petitioner’s above-referenced Form I-129F was not revoked. Instead the applicant withdrew the petition on July 6, 2006 and its approval was terminated by CIS. On October 19, 2006 a second Form I-129F was filed by the petitioner on behalf of the beneficiary. The director issued a notice of intent to deny, requiring the petitioner to submit evidence within 30 days to establish her relationship with the beneficiary. The petitioner responded to the director’s request by submitting numerous photographs of herself with the beneficiary.

On January 31, 2007, the director denied the Form I-129F, stating that, while the petitioner had responded to the notice of intent to deny, she had failed to submit sufficient evidence that her relationship with the beneficiary was “bonafide”. The director specifically noted that contradictions in the testimony from the petitioner and the beneficiary called the relationship into question.

On appeal, the petitioner submits a statement and further evidence of her relationship with the petitioner. The AAO notes that the record includes copies of the petitioner’s U.S. passport showing entry into Heathrow Airport in London on May 20, 2006; April 11, 2006; April 15, 2005; January 28, 2005; December 17, 2004 and October 25, 2002. The record also contains photographs of the petitioner and beneficiary together at Heathrow Airport and in a house. In addition, the AAO notes that the petitioner’s U.S. passport and the date of the consular interview in London place both the petitioner and beneficiary in the United Kingdom in 2005.

Section 214(d) of the Act states that CIS *shall* approve the Form I-129F when a petitioner submits evidence to establish that he/she and the beneficiary have met within the two-year period immediately the filing of the Form I-129F, have a bonafide intention to marry and are legally able and willing to marry within 90 days of the beneficiary’s arrival in the United States. In revoking the instant petition, the director appears to have imposed an additional requirement on the petitioner – establishing the genuineness of her relationship to the beneficiary. However, no such requirement exists for the approval of a Form I-129F and the AAO finds the director to have erred in imposing it. While section 214(d) of the Act stipulates that the petitioner must establish that she and the beneficiary have a bonafide intention to marry, this language is not synonymous with a requirement that the petitioner establish the closeness of their relationship.

In reaching its decision, the AAO notes the concerns expressed by the consular officer and, subsequently, the director regarding the contradictions in the information given by the petitioner and the testimony of the beneficiary during his interview on September 12, 2005. However, as just noted, section 214(d) of the Act does not require CIS to evaluate the closeness of the fiancé relationship before approving the petitioner’s Form I-129F. Instead, it allows for the approval of the Form I-129F when the petitioner and beneficiary have met during the two-year period preceding the date of filing. Accordingly, the reservations expressed by the consular officer and the director regarding the previous Form I-129F are not probative for the purposes of these proceedings.

The director’s denial of the instant petition is based solely on the petitioner’s failure to submit sufficient evidence to establish the genuineness of her relationship to the beneficiary. As the director erred in imposing such a requirement on the petitioner, the AAO finds the petitioner to have overcome the basis for the director’s denial. Accordingly, 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.