

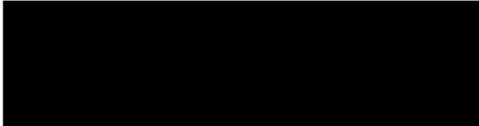
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

D6



FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: DEC 27 2010

IN RE: Petitioner:
Beneficiary:



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:

SELF-REPRESENTED

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the petition remanded for entry of a new decision.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, 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 nonimmigrant visa petition because the petitioner did not establish that he has a bona fide relationship with the beneficiary and that he and the beneficiary personally met within the two-year period immediately preceding the filing of the petition. On appeal, the petitioner submits a statement and additional evidence.

At the outset, it is noted that section 214(d) of the Act states that USCIS *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 preceding the filing of the petition, 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 denying the instant petition, the director appears to have imposed an additional requirement on the petitioner – establishing a bonafide relationship with 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 he and the beneficiary have a bonafide intention to marry, this language is not synonymous with a requirement that the petitioner establish a bonafide relationship with the beneficiary. Therefore, the director's comments are this issue are withdrawn.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

Subject to subsections (d) and (p) of section 214, an alien who -

(i) 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)(1) of the Act, 8 U.S.C. § 1184(d)(1), states in pertinent part that a fiancé(e) petition:

[s]hall 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

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on February 5, 2010. Therefore, the petitioner and the beneficiary were required to have met in person between February 5, 2008 and February 5, 2010.

When he filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner stated that he met the beneficiary on May 5, 2009, in Davao City, and they stayed at the [REDACTED]

On August 17, 2010, the director issued an RFE, requesting that the petitioner submit additional documentation, including evidence that he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition.

In his September 7, 2010 response to the director's RFE, the petitioner submitted additional evidence. The petitioner also submitted previously submitted evidence, including a copy of a U.S. passport page reflecting Filipino arrival and departure stamps, dated April 30, 2009 and May 11, 2009, respectively.

The director denied the petition because the petitioner failed to establish that he and the beneficiary had met, as required under section 214(d) of the Act. The director found that the beneficiary's October 31, 2009 email casts doubt on the petitioner's claim that he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition.

On appeal, the petitioner states, in part, that he first met the beneficiary one month prior to filing his first I-129F petition in June 2009, on behalf of another beneficiary. As discussed above, the petitioner indicated on the petition that he met the beneficiary on May 5, 2009, in Davao City, and that they stayed at the [REDACTED]. The petitioner also states that the inconsistency in the beneficiary's October 31, 2009 email is due to the beneficiary's problem with English grammar, namely "getting her past and present tenses correct." The record contains the following evidence of the claimed May 2009 in-person meeting with the beneficiary: a copy of a U.S. passport page reflecting Filipino arrival and departure stamps, dated April 30, 2009 and May 11, 2009, respectively; receipts from the [REDACTED] in Davao City, Philippines, dated May 4, 2009, made out to the petitioner; undated photographs of the petitioner with the beneficiary; and numerous email messages referencing the in-person meeting. It is noted that in his October 31, 2009 email to the beneficiary, the petitioner described in detail the time they spent together in Davao, how the beneficiary's cousin angered him when she tried to trick him into buying things for her, and his concern that the beneficiary would "act like her someday, because [he knows] that people are much like the friends they have around them." In her October 28, 2009 email to the petitioner, the beneficiary talks about when she and the petitioner will meet "again" and when they "are together again." A review of the record in its entirety finds that the petitioner has submitted sufficient evidence to demonstrate that he and the beneficiary met in person during the requisite two-year period between February 5, 2008 and February 5, 2010. In view of the foregoing, the petitioner has overcome the objection of the director.

The petition may not be approved, however, because the director did not notify the petitioner that he was subject to the "International Marriage Broker Regulation" (IMBRA). On January 5, 2006, the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006), 8 U.S.C. § 1375a. Title VII of VAWA 2005 is entitled "Protection of Battered and Trafficked Immigrants," and contains Subtitle D, "International Marriage Broker Regulation" (IMBRA), codified at sections 214(d) and (r) of the Act. Section 214(d)(2) of the Act states, in pertinent part:

(A) Subject to subparagraphs (B) and (C), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that--

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. . . .

In sum, if a petitioner has filed two or more K-1 visa petitions at any time in the past, or previously had a K-1 visa petition approved within two years prior to the filing of the current petition, the petitioner must request a waiver.

On the instant Form I-129F petition, the petitioner answered "No" to question #11 in Part A that asks whether the petitioner has ever filed a Form I-129F alien fiancé(e) petition for the same or any other alien. We, note, however, that on June 22, 2009, the petitioner filed a Form I-129F petition on behalf of [REDACTED] seeking to classify her as an alien fiancé(e). U.S. Citizenship and Immigration Services (USCIS) approved the petition on October 2, 2009. Although the petitioner subsequently wrote a letter to the U.S. Consulate in Manila seeking to withdraw the Form I-129F petition, he must nevertheless seek a waiver of the filing requirements imposed by IMBRA because he had an I-129F petition approved within two years of filing the instant I-129F petition on behalf of the beneficiary,

Accordingly, we withdraw the director's decision and remand the matter so that the director may provide the petitioner with an opportunity to seek a waiver of the filing requirement imposed by IMBRA. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.