

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



D 6

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 15 2010

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:

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, initially approved the nonimmigrant visa petition and subsequently revoked its approval based upon information that the U.S. Consulate provided regarding the beneficiary's interview. 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 The director's decision shall be withdrawn and the petition remanded for entry of a new decision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 Viet Nam, 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 revoked his initial approval of the nonimmigrant visa petition because the petitioner did not establish that he intends to conclude a valid marriage with the beneficiary. On appeal, the petitioner requests additional time to submit proof of his bona fide relationship with the beneficiary.

At the outset, it is noted that the instant petition was originally approved on August 9, 2007. On October 27, 2008, the petition was returned from the U.S. Consulate General in Ho Chi Minh City, Viet Nam, with a recommendation for revocation, as it appeared that the relationship between the petitioner and the beneficiary existed merely for immigration purposes. On October 1, 2009, the director issued a notice of intent to deny (NOID), advising the petitioner to submit additional documentation to demonstrate that he and the beneficiary have a bona fide relationship. The petitioner responded with additional documentation. On August 3, 2010, the director denied the nonimmigrant visa petition because the petitioner did not establish that he intends to conclude a valid marriage with the beneficiary.

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 U.S. Citizenship and Immigration Services (USCIS) on March 20, 2007. Therefore, the petitioner and the beneficiary were required to have met in person between March 20, 2005 and March 20, 2007.

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, in part, that he met the beneficiary through her uncle, and that he went to Viet Nam to meet her and stayed for three weeks.

On October 1, 2009, the director issued a notice of intent to deny (NOID), requesting evidence of a bona fide relationship between the petitioner and the beneficiary.

The petitioner submitted additional documentation in response to the director's NOID.

The director denied the nonimmigrant visa petition because the petitioner did not establish that he intends to conclude a valid marriage with the beneficiary.

On appeal, the petitioner requests additional time to submit proof of his bona fide relationship with the beneficiary.

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.

In reaching its decision, the AAO notes the concerns expressed by the consular officer that the petitioner and the beneficiary became engaged within one week of their first in-person meeting, that the beneficiary was unaware of basic facts pertaining to the petitioner, and that the signature on the claimed correspondence from the petitioner did not match the petitioner's signature. However, as just noted, section 214(d) of the Act does not require that USCIS evaluate the bona fides of the fiancé(e) relationship before approving the petitioner's Form I-129F. As such, the petitioner has overcome the director's objections.

The petition may not be approved, however, as the record still does not contain original statements from the petitioner and the beneficiary or other evidence that establishes their mutual intent to marry within 90 days of the beneficiary's entry into the United States in K-1 status. In view of the foregoing, the director's decision shall be withdrawn and the petition remanded for the director to obtain the required documentation, as noted above. 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.