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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

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 13 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 Acting 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 The director's decision will be withdrawn and the matter remanded for further action.

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).

On July 1, 2010, the director issued a notice of intent to deny (NOID), advising the petitioner to submit additional documentation in accordance with the requirements of the International Marriage Broker Regulation Act (IMBRA) of 2005, Pub. L. No. 109-162, dated January 5, 2006

In his response to the director's NOID, the petitioner submitted documentation related to his conviction on September 2, 2004, of a misdemeanor offense of a violation of California Penal Code section 273d(a) (Inflicting Corporal Injury on Child), in the Superior Court of California, County of Santa Clara.¹

The director denied the nonimmigrant visa petition because the record did not establish that the petitioner had complied with the requirements under the IMBRA, specifically that he did not request a waiver. On appeal, the petitioner submits a personal letter, dated August 13, 2010, requesting a waiver.

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(c) 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

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). IMBRA provides that a petitioner for a nonimmigrant visa for an alien fiancé(e) (K-1) or alien spouse (K-3) must submit with his or her Form I-129F information on any criminal convictions for any of the following "specified crimes":

¹ Case Number: [REDACTED]

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes.
- Crimes relating to a controlled substance or alcohol where the petitioner has been convicted on at least three occasions and where such crimes did not arise from a single act.

If the petitioner indicates that he or she has been convicted by a court or by a military tribunal for one of the specified crimes or U.S. Citizenship and Immigration Services (USCIS) ascertains through relevant background checks that the petitioner has been convicted, the petitioner will be required to submit certified copies of all court and police records showing the charges and dispositions for every conviction. This is required even if the petitioner's records were sealed or otherwise cleared.

The provisions of IMBRA apply to all petitions filed on or after March 6, 2006. IMBRA imposes limitations on the number of petitions a petitioner for a K nonimmigrant visa for an alien fiancé(e) (K-1) may file or have approved without seeking a waiver of the application of those limitations. If the 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. In this matter, the petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on April 23, 2010. On item #11 of the petition, the petitioner indicated that he had not filed for the beneficiary or any other alien fiancé(e) or husband/wife before. Thus, the petitioner is not required to request a waiver, and the director's denial of the petition on the basis of the petitioner's failure to request a waiver was in error and is hereby withdrawn. The petition may not be approved, however, because 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.² Accordingly, the AAO shall remand the matter to the Acting Director so that she can provide the petitioner with an opportunity to submit all of the required documentation. The director may request any additional information or evidence that she deems necessary. 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.

² The instructions to the I-129F petition at pages 2 and 3, items #5 and #6, state that the above described documentation must be submitted for both the petitioner and the beneficiary.