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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**

D6

[REDACTED]

Date: **OCT 18 2011**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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)

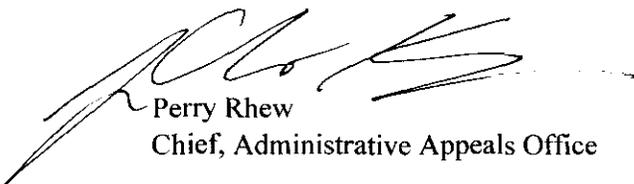
ON BEHALF OF PETITIONER:

[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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, 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 pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c), upon a determination that the beneficiary entered into his prior marriage for the purpose of evading the immigration laws.

#### *Applicable Law*

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:

shall 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, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

The specific requirements for filing a Petition for Alien Fiancé(e) (Form I-129F), including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

#### *Factual and Procedural History*

The beneficiary previously married L-N-, a U.S. citizen, on August 6, 2002 in Jiangmen City, China.<sup>1</sup> On August 20, 2002, L-N- filed a Petition for Alien Relative (Form I-130) on the beneficiary's behalf. The Form I-130 was denied because L-N- had filed immigrant petitions on behalf of multiple spouses without establishing that she was legally free to marry when the petitions were filed. The beneficiary obtained a divorce from L-N- on February 8, 2006 in Los Angeles, California. The petitioner filed the instant fiancé(e) petition with U.S. Citizenship and Immigration Services (USCIS) on behalf of the beneficiary on June 7, 2006 with all of the required initial evidence.

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<sup>1</sup> Name withheld to protect the individual's identity.

On January 21, 2011, the director issued a Notice of Intent to Deny (NOID) to the petitioner to allow her to rebut derogatory information considered by USCIS as the basis for intended denial. The director stated that the beneficiary's former spouse, L-N-, revealed during an investigation of a large scale marriage fraud scheme that she married the beneficiary for the purpose of circumventing immigration laws and for immigration purposes only. The director noted that L-N- testified in a sworn statement before immigration officers that her marriage to the beneficiary "was a fake marriage to get him a green card" and she "was paid \$3,500 for the fake marriage." The director determined that the instant Form I-129F petition is subject to denial under section 204(c) of the Act because the beneficiary's prior marriage was entered into for the sole purpose of evading immigration laws. The petitioner, through counsel, timely responded to the NOID with additional evidence, which the director found insufficient to overcome the basis of intended denial. On April 25, 2011, the director denied the petition for the reasons stated in the NOID.

On appeal, counsel asserts in a supplemental brief that the record does not establish that the beneficiary was a knowing and willful participant in a fraudulent marriage. Counsel submits a copy of a birth certificate for the petitioner's U.S. citizen child and a copy of L-N-'s U.S. passport with arrival/departure stamps reflecting her travel to Hong Kong.

*Analysis*

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . , by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The eligibility requirements for the approval of an immigrant petition are further explicated in the regulation at 8 C.F.R. § 204.2(a)(1)(ii), which states, in pertinent part:

Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for *immigrant* visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file. (emphasis added.)

Section 204 of the Act governs the procedures for granting immigrant status. The implementing regulations for section 204 of the Act clarify that section 204(c) only pertains to petitions for immigrant visa classification. The petitioner in the instant case has not filed an immigrant petition, but a nonimmigrant petition for a fiancé(e) visa under section 214(d)(1) of the Act. There is no corresponding prohibition on the approval of nonimmigrant petitions for aliens who have committed marriage fraud. Since the marriage fraud bar of section 204(c) of the Act does not apply in these proceedings and the petitioner has otherwise met all of the Form I-129F eligibility requirements, the AAO must withdraw the director's decision and sustain the appeal.

We note that although the petitioner has met the eligibility requirements for the approval of a Form I-129F, the beneficiary must still demonstrate his admissibility to the United States prior to the issuance of a K-1 nonimmigrant visa. Pursuant to the nonimmigrant admission regulations at 8 C.F.R. § 214.1(a)(3)(i), every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived. The beneficiary in this case appears to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for the willful misrepresentation of a material fact in order to procure an immigration benefit. Section 212(i) of the Act provides a discretionary waiver of inadmissibility arising under section 212(a)(6)(C)(i) of the Act.

### *Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has now been met. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.