



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: Vermont Service Center

Date: AUG 1 2000

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

Public Copy

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States. The beneficiary is a native and citizen of the Philippines. The director determined that the beneficiary was not legally able to marry the petitioner at the time the petition was filed.

On appeal, the petitioner states that the beneficiary is going to get her first marriage annulled. The petitioner requests that the Service allow the case to remain open until he can submit the annulment papers.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiancee" as:

An alien who is the fiancee or fiance 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 entry....

The Petition for Alien Fiance(e) (Form I-129F) was filed with the Service on July 30, 1999 and indicates that the beneficiary was previously married to [REDACTED]. The record contains the beneficiary's marriage certificate which reflects the date of marriage as February 23, 1989. The record does not contain the beneficiary's final divorce decree. Therefore, the beneficiary was not legally able to marry the petitioner at the time the petition was filed.

The regulation at 8 C.F.R. 103.2(b)(12) states in pertinent part that:

An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed....

The petitioner submitted two affidavits. One of the affidavits established that the beneficiary and her prior spouse agreed to separate. The other affidavit established the beneficiary's ex-spouses's consent to her marrying again. Since the evidence submitted does not establish that the beneficiary's marriage to [REDACTED] terminated prior to the petition's filing date, the petition cannot be approved. Further, there is no statute or regulation which allows this case to remain open until such evidence is received.

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 not met that burden.

ORDER: The appeal is dismissed.