



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: California 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States, who had one previous marriage. The beneficiary is a native and citizen of Romania, who had one previous marriage. The director determined that the petitioner had not submitted evidence of the termination of the marriage between [REDACTED]. The director also determined that the petitioner had not submitted ADIT photographs of himself and the beneficiary.

On appeal, the petitioner states that he is now in Romania on vacation and got married there. The petitioner also states that he applied for a visa on July 13, 1999.

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 on March 9, 1999. The petitioner states on appeal that while he was in Romania on vacation, he married the beneficiary and applied for a visa July 13, 1999. Since the petitioner states that he has entered into a valid marriage with the beneficiary, the beneficiary is statutorily ineligible for the status sought.

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. This decision is, nevertheless, without prejudice to the filing of a new petition (Form I-130) to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act, along with the required documentary evidence and fee.

ORDER: The appeal is dismissed.