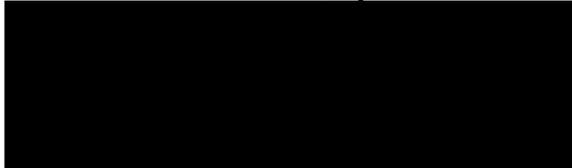




U.S. Department of Justice
Immigration and Naturalization Service

DC

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



Public Copy

File: [Redacted] Office: Texas Service Center

Date: AUG 3 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)

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was initially approved by the Director, Texas Service Center. On the basis of information received from the American Embassy, Bangkok, Thailand, the director determined that the beneficiary was no longer eligible for the benefit sought. Accordingly, the director, on his own motion, reopened the proceeding and gave the petitioner 30 days in which to submit additional evidence. Upon consideration of the evidence submitted, the director denied the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States, who had one previous marriage. The beneficiary is a native and citizen of Thailand, who had one previous marriage. In the course of his visa interview at the American Embassy, it was revealed that the beneficiary has a child from a previous marriage that was not listed on the visa petition. Therefore, the visa petition was returned to the Service for reconsideration of its approval. The director determined that the beneficiary willfully failed to provide full and truthful information requested by the Service which constitutes a failure to maintain nonimmigrant status under section 241(a)(1)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1251(a)(1)(C)(i).

The petitioner states on appeal that the omission was a misunderstanding about how to classify this child on paper.

The regulation at 8 C.F.R. 214.1 states:

(f) *False information.* A condition of a nonimmigrant's admission and continued stay in the United States is the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to provide full and truthful information requested by the Service (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 241(a)(1)(C)(i) of the Act.

Section 241(a)(1)(C)(i) of the Act, redesignated as section 237 by section 305(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, states:

(C) *Violated Nonimmigrant Status or Condition of Entry.-*

(i) *Nonimmigrant Status Violators.-*Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted...is deportable.

The reasons for the director's denial of this visa petition are not applicable to this case. The beneficiary was never admitted as a nonimmigrant, and therefore, cannot fail to maintain nonimmigrant status due to his willful failure to provide full and truthful information. However, the fact remains that an application or petition must be completed as applicable and filed with any initial evidence required by regulation or by the instruction on the form. 8 C.F.R. 103.2(b)(1).

The petition requires that all children of the beneficiary must be listed. The petition indicates that the beneficiary has no children. On the basis of information obtained from the American Embassy, the beneficiary has one child from his previous marriage to [REDACTED]. The petitioner states that although the beneficiary signed the birth certificate, the child is not his natural child. The petitioner asserts that the beneficiary's former spouse was already three months pregnant when they married.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). The petitioner's assertion that the child is not the natural child of the beneficiary is insufficient since it has not been substantiated by credible evidence.

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.