



U.S. Department of Justice

Immigration and Naturalization Service

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



D6

File: [Redacted] Office: Nebraska Service Center

Date: DEC 8 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: [Redacted]

Public Copy

Identifying data redacted to
protect 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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The petition will be remanded to the director for further action and consideration.

The petitioner is a citizen of the United States, who had one previous marriage. The beneficiary is a native and citizen of Laos. The director determined that the petitioner had not established that the beneficiary was free to marry at the time the petition was filed.

On appeal, counsel states that since the petitioner's marriage to the beneficiary is considered invalid, the fiancée petition should be granted.

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

An alien who 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 entry....

The record indicates that the petitioner filed a Petition for Alien Relative (Form I-130) which was approved of June 2, 1998 and sent to the American Embassy in Vientiane, Laos. In a letter dated April 26, 1999 to the petitioner, the American Consul stated that a marriage certificate is required from the Lao Ministry of Foreign Affairs in order to have a wedding between a foreign and a Lao national valid in Laos. In the same letter, the petitioner was advised by the American Consul to file a fiancée petition (Form I-129F). The fiancée petition was filed on May 28, 1999, and later denied by the Service since it was believed that the petitioner and beneficiary were legally married.

In an advisory opinion from the Library of Congress concerning the validity of the petitioner's marriage certificate, the senior legal specialist stated that the marriage certificate was legally registered at the local administrative level. However, an official at the Lao Embassy was contacted and that official stated that the marriage certificate needs to be further certified by the Ministry of Foreign Affairs in order to be considered valid. Therefore, as the marriage certificate is not considered to be a valid document, the petitioner should be permitted to file a fiancée petition to establish the beneficiary as the fiancée of an United States citizen.

However, this petition cannot be approved for other reasons. The Petition for Alien Fiance(e) (Form I-129F) indicates that the petitioner was previously married to Thongsoune. The petition also indicates that the marriage ended on November 1997. The record

does not contain a copy of the final divorce decree showing the date that the marriage terminated. Consequently, the petitioner has not established that his previous marriage has been legally terminated.

Since this deficiency was not reflected in the director's decision, the petitioner will be afforded an opportunity to submit such evidence. Upon receipt of all evidence, the director will review the entire record prior to entering a new decision.

ORDER: The director's decision is withdrawn. The matter is remanded for further action and consideration in accordance with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.