



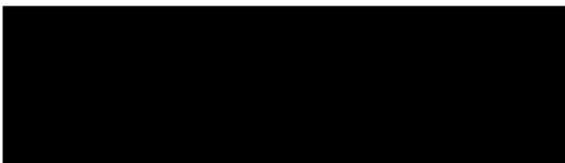
U.S. Department of Justice

Immigration and Naturalization Service

TT

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

Public Copy



File: [Redacted]

Office: VERMONT SERVICE CENTER

Date: 1/20/2000

IN RE: Petitioner:
Beneficiary:



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)

Identifying information to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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 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 who is currently married. The beneficiary is a divorced native and citizen of the Dominican Republic. The director determined that on August 30, 1999, the date this petition was filed with the Service, the petitioner was not free to marry.

On appeal, the petitioner submits a photocopy of a divorce application in her name filed on October 20, 1999, confirming that she filed for divorce in the United States. However, she states that the Divorce Processing Center told her that it would take from 3 to 5 months to process her application.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), provides nonimmigrant classification to the fiancée or fiancé of a U.S. citizen who intends to conclude a valid marriage with that citizen within 90 days after entry. The Service must review the information and evidence in the record and determine that the parties intend to enter into a bona fide marriage.

On August 30, 1999, the date this petition was filed with the Service, the petitioner was not free to marry. Therefore, the petitioner was not entitled to file a fiancé(e) petition in behalf of the beneficiary.

The burden of proof in these proceedings rest solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.