D6

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

[redacted]

Public Copy

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 28 2001

IN RE: Petitioner:
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

Myron L. Rosenberg

for Robert P. Wiemann, Acting 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 citizen of the United States who seeks to classify the beneficiary, a native and citizen of Fiji, as the fiance(e) of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K).

The director denied the petition after determining that the petitioner was not legally able to conclude a valid marriage with the beneficiary as required by section 214(d) of the Act.

On appeal, the petitioner states that due to civil unrest in Fiji, he was afraid for the beneficiary's safety and wanted to get her out of that country as soon as possible. Therefore, even though he was aware that he could not remarry until after August 18, 2000, he believed that by the time the petition was processed, he would be free to marry and this would only speed the process of getting the beneficiary out of Fiji.

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

Section 214(d) of the Act, 8 U.S.C. 1184(d) states in pertinent part that a fiancee petition:

> shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bonafide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival...

The record contains a copy of the petitioner's divorce decree, which states that he and his former wife are restored to the status of unmarried persons as of August 18, 2000. The instant I-129F petition was filed on June 1, 2000. Therefore, at the time the petition was filed, the petitioner was not legally able to conclude a valid marriage with the beneficiary.

8 C.F.R 103.2(b)(12) states:

> *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* 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 petition was filed.

The instant petition may not be approved because the petitioner was not legally able to conclude a valid marriage at the time the petition was filed. As previously stated, the petitioner was not free to remarry until August 18, 2000 while the I-129F petition was filed on June 1, 2000. Therefore, the petitioner was not eligible to file the petition at the time he did because he was still married to his former spouse.

Despite this finding, the petitioner may file a new I-129 petition in the beneficiary's behalf now that he is legally able to conclude a valid marriage. The denial of the instant petition does not prejudice the filing of a new I-129F petition.

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.