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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]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 05 2003
(LIN 02 139 54850 relates)

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, 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 appeal will be dismissed.

The petitioner seeks to classify the beneficiary, a native and citizen of Vietnam, 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).

Section 101(a)(15)(K) of the Act 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 fiance(e) 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 bona fide 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 director denied the petition on July 16, 2002 after determining that the petitioner was a lawful permanent resident, not a citizen of the United States and that the petitioner and beneficiary were already married. The beneficiary, therefore, did not qualify as the fiancee of a citizen of the United States.

The petitioner subsequently filed a motion to reopen the director's decision. In support of his motion, the petitioner submitted evidence that he passed the English, U.S. History, and Government tests as a part of the naturalization process and that his application for naturalization had been recommended for approval.

On September 12, 2002, the director granted the motion and affirmed the decision to deny the petition. The director noted that the petitioner had not been granted final approval of his application for naturalization and had not participated in the ceremony granting him United States citizenship. The director also again noted that the petitioner and beneficiary were already married and concluded that, therefore, the beneficiary did not qualify as the fiancee of a citizen of the United States.

On appeal to the Associate Commissioner, the petitioner submits a copy of a certificate of naturalization for [redacted] The petitioner states that he changed his name at the time of

naturalization, but no documentary evidence that the petitioner and [redacted] are one and the same person is contained in the record of proceeding. Furthermore, even if the petitioner is now a naturalized United States citizen, he was not a citizen at the time the petition was filed. On appeal, the petitioner has also failed to submit any information to rebut the director's finding that he and the beneficiary are already married and that the beneficiary, therefore, does not qualify as a fiancee.

The record reflects that the petitioner was a lawful permanent resident at the time of the filing of the petition and that the petitioner and beneficiary are already married. The petitioner has failed to establish that the beneficiary qualified as the fiancee of a United States citizen as of the date of filing the petition on March 21, 2002.

It is noted that the petitioner may wish to file a Petition for Alien Relative (Form I-130) on behalf of the beneficiary, to classify her as the spouse of a lawful permanent resident or a citizen of the United States, in accordance with the regulations and instructions regarding such petitions.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.