D6

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
BCIS, AAO, 20 Mass, 3/F
ULLB, 3rd Floor
Washington, D.C. 20536

APR 22 2003

FILE: [redacted] Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Alien Fiancé(e) under Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a native and citizen of the United States. The beneficiary is a native and citizen of India. The director denied the petition after determining that the petitioner and the beneficiary married each other in India on June 23, 1997, and she no longer qualified as a fiancée when the visa petition was filed on July 1, 2002.

On appeal, the petitioner discusses his filing of a Petition for Alien Relative (Form I-130) at the U.S. Consulate in Mumbai, India, and their refusal to issue the beneficiary an immigrant visa. The petitioner then filed the above fiancé(e) visa petition. The petitioner indicates that the Consulate indicated that they were not married and now the Bureau states that they are married.

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 an alien who:

> (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
>
> (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
>
> (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(p) of the Act, 8 U.S.C. § 1184(p), provides that:

> (1) A visa shall not be issued under the provisions of section 101(a)(15)(K)(iii) of the Act until the consular officer has received a petition filed in the United States by the spouse of the applying alien and approved by the Attorney General...
>
> (2) In the case of an alien seeking admission under section 101(a)(15)(K)(iii) of the Act who concluded a marriage with a citizen of the United States outside the United States, the alien shall be considered inadmissible under section 212(a)(7)(B) if the alien is not at the time of application for admission in possession of a valid nonimmigrant visa issued by a consular officer in the foreign state in which the marriage was concluded.

Subsection 1103(a) of the Legal Immigration Family Equity Act (LIFE Act), Public Law 106553 (2000), amended section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), to include a nonimmigrant classification for the spouse of a United States citizen. In order to qualify for a K-3 nonimmigrant classification, the beneficiary must first be married to a U.S. citizen who has filed a Petition for Alien Relative on behalf of the alien. The spouse must be seeking to enter the United States to wait for "the availability of an immigrant visa." The LIFE Act was enacted on December 21, 2000, and the related regulations were published in an interim rule on August 14, 2001. See 66 Fed. Reg. 42587 (2001)(to be codified at 8 C.F.R. § 214.2).

Pursuant to 8 C.F.R. § 214.2(k)(7) provides:

> To be classified as a K-3 spouse as defined in section 101(a)(15)(K)(iii) of the Act . . . the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for K-3 nonimmigrant visa filed on Form I-129F.

According to a response to a Congressional Inquiry in the record, the petitioner filed a Petition for Alien Relative on behalf of the beneficiary at the U.S. Consulate in Mumbai, India on May 15, 2000. That petition was denied on the grounds that their marriage document was either improperly filed or was not recognized for immigration purposes. Therefore, the petitioner filed the above fiancé(e) visa petition.

It is concluded that, if the petitioner's marriage is not recognized for immigration purposes in order to have an immigrant visa petition approved, then the petitioner cannot be considered "married" for the purpose of denying a finacé(e) visa petition.

Section 214(d) of the Act, 8 U.S.C § 1184(d), provides that the petitioner must establish that he or she and the beneficiary have met in person within two years immediately before the petition is filed. The record reflects that the parties met in April 2002, prior to the July 2002 filing date.

The petitioner has established the beneficiary's eligibility for the benefit sought. The director's decision will be withdrawn and the appeal will be sustained.

ORDER: The director's decision is withdrawn, and the appeal is sustained.