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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
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 25 2003
(LIN 01 142 53742 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)

ON BEHALF OF APPLICANT: 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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Laos, 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 evidence submitted failed to sufficiently demonstrate that the petitioner and beneficiary are legally able to enter into a valid marriage in the petitioner's state of residence or elsewhere in the United States.

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 petitioner filed the Petition for Alien Fiance(e) (Form I-129F) on March 30, 2001. The petition was initially approved on April 11, 2001 and forwarded to the U.S. Embassy in Vientienne, Laos for visa processing. Subsequent to the approval, the petition was returned to the Service by the Embassy because the beneficiary had provided a statement indicating that she and the beneficiary are first cousins. In her statement before a consular officer, the beneficiary indicated that the petitioner's mother, "Home," is her aunt, her mother's sister.

Based on the information received, the Service moved to reopen the matter and, on March 6, 2002, provided the petitioner with an opportunity to rebut the adverse information received pursuant to 8 CFR section § 103.2(b)(16).

In response, the petitioner provided a certified attestation from [redacted] asserting that she is the mother of the beneficiary and that she [redacted] is unrelated to the family of Home

Kouangvanh, the mother of the petitioner. She further asserted that the petitioner and beneficiary entered into an engagement on June 20, 2001 and that "both families hereby affirm and take an oath that all the words mentioned are very true (not sibling nuptial)."

The director found that the statement of contradicted the statement given by the beneficiary and determined that it was insufficient to resolve the inconsistencies contained in the record. The director denied the petition accordingly.

In his appeal, the petitioner stated that he required an additional 60 days in which to submit a brief and/or evidence on appeal because he was waiting for documentation from Laos. Subsequently, a letter from Senator was received on behalf of the petitioner, enclosing the results of a DNA analysis on the petitioner and the beneficiary performed by Identity Genetics, Inc in Brookings, South Dakota. The Senator's letter explains that the beneficiary did not mean that her mother and the petitioner's mother were, literally, blood sisters and indicates that he (the Senator) has been told that she meant that the two women were very, very close friends and like family in all ways but biological. The DNA analysis data presented indicates that it does not support the conclusion of a genetic relationship of either first or second cousins between the petitioner and beneficiary.

This genetic evidence supports the petitioner's assertion that he and the beneficiary are not related. In many cultures around the world close friends refer to each other as "sister". Similarly, "auntie" is used as a term of endearment and respect. It is therefore, reasonable to assume that it was in this context that the petitioner used these terms in her interview with the consular officer. It was not meant to infer that she and the petitioner were, in fact, genetically cousins.

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 now met that burden.

ORDER: The appeal is sustained.