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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

SEP 12 2003

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 02 142 52697

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: 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

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 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 Korea, as the fiancée of a United States citizen, pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 101(a)(15)(K). The director denied the petition, stating that a petitioner may not file a petition for a fiance(e) (Form I-129F) if the two are already married.

On appeal, the petitioner admits that he and his wife married on May 31, 2001, prior to the filing of their Form I-129F petition. The petitioner states, however, that in spite of this fact, his wife is eligible for a fiancée visa pursuant to amendments made to the law by the LIFE Act.

Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category as:

> An alien who is the fiancée or fiancée 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 admission, and the minor children of such fiancée or fiancée accompanying him or following to join him.

Subsection 1103(a) of the Legal Immigration Family Equity Act (LIFE Act), Public Law 106-553 (2000), amended section 101(a)(15)(K) of the Act to include a K-3 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 United States citizen who has filed an immediate relative visa petition on behalf of the alien, and the spouse must be seeking to enter the United States to wait for "the availability of an immigrant visa." *See* 8 C.F.R. § 214.2.

8 C.F.R. § 214.2(k)(7) provides, in pertinent part that:

> To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) 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 a K-3 nonimmigrant visa filed on Form I-129F . . . .

The record in this case reflects that the petitioner filed a Form I-130 on behalf of the beneficiary on August 29, 2001, and that the Form I-130 was approved on July 23, 2002. The record reflects further that in March 2002, the petitioner filed a Form I-129F petition on behalf of the behalf of his wife.

Pursuant to 8 C.F.R. § 214.2(k)(7), the petitioner has thus established that his spouse is the beneficiary of an approved Form I-130 immigrant visa petition, and that she is eligible for the K-3 nonimmigrant classification based on the amendments made by the LIFE Act.

ORDER: The appeal is sustained.