



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



Public Copy

FILE:

Office: Newark

Date:

MAR - 8 2001

IN RE: Applicant:

APPLICATION: Application for Adjustment of Status to Permanent Residence Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255

IN BEHALF OF APPLICANT:



Identification 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Newark, New Jersey, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Israel who is seeking to adjust her status to that of a lawful permanent resident pursuant to section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1255.

The district director determined that the applicant was ineligible for adjustment of status based on her admission to the United States as a fiancée under section 101(a)(15)(K) of the Act, 8 U.S.C. 1101(a)(15)(K), because: (1) she was already married to the petitioning United States citizen prior to her admission on July 20, 1999; and (2) the applicant was admitted as a fiancée and she failed to contract a marriage to the U.S. citizen petitioner within 90 days of her entry to the United States as proscribed by law. The district director, therefore, denied the application.

In response to the notice of certification, counsel argues that section 245(d) of the Act simply states that in order to be eligible for adjustment of status, a nonimmigrant alien described in section 101(a)(15)(K) of the Act must be married to the citizen who filed the petition; it does not state that in order to adjust status, the marriage must have been entered into within 90 days of entry to the United States. Counsel asserts that although a marriage certificate was issued in the town of Rimal in the Gaza Strip on November 25, 1998, the applicant's marriage to the U.S. citizen was finalized and made official according to Palestinian custom and law on July 16, 1999. She further asserts that no fraud was used in order for the applicant to procure her nonimmigrant K visa since it was issued on May 14, 1999, and under Palestinian law, the applicant was not yet married to the U.S. citizen and was indeed still considered to be a fiancée when the visa was issued.

The record reflects that on July 20, 1999, the applicant was admitted to the United States with a K-1 nonimmigrant visa valid until October 19, 1999. Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category as:

An alien who is the fiancée or fiancé 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 fiancé accompanying him or following to join him.

On August 3, 1999, the applicant filed an application to adjust her status to that of a lawful permanent resident based on her marriage to her United States citizen spouse on July 16, 1999.

8 C.F.R. 245.1(c) states, in part, that the following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act:

(6) Any alien admitted to the United States as a nonimmigrant fiance as defined in section 101(a)(15)(K) of the Act, unless the alien is applying for adjustment of status based upon a marriage which was contracted within 90 days of entry with the United States citizen who filed a petition on behalf of the alien pursuant to 8 C.F.R. 214.2(k).

8 C.F.R. 214.2(k) states, in pertinent part:

(6)(ii) Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K visa issued on or after November 10, 1986, the beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act.

Counsel argues that the applicant was and remains married to the citizen who filed the fiancee petition, and since the language of section 245(d) only requires this fact for adjustment and does not require that the marriage was entered into within 90 days of entry, the applicant, therefore, remains eligible for adjustment of status. This argument, however, is without merit. The applicant entered the United States on July 20, 1999, with a K-1 nonimmigrant visa pursuant to section 101(a)(15)(K) of the Act. She did not meet the qualification of section 101(a)(15)(K) of the Act upon her arrival in the United States; therefore, she does not qualify for adjustment of status pursuant to section 245 of the Act.

As determined by the district director, the applicant was married to the United States citizen petitioner prior to her arrival in the United States with a K-1 fiancee visa. As further determined by the district director, the facts remain that the applicant was admitted as a fiancee under section 101(a)(15)(K) of the Act and failed to contract a marriage to the United States citizen petitioner within 90 days of her entry.

The applicant is, therefore, statutorily ineligible for adjustment of status to permanent residence pursuant to section 245 of the Act. The district director's decision to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.