identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 02 2005
WAC 01 275 53342

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Alien Fiancé(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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center initially approved the nonimmigrant visa petition. He subsequently reopened the proceeding, vacating his prior decision and denying the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Mexico, as the fiancé 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 nonimmigrant petition after determining that the petitioner had failed to submit sufficient evidence to establish a fiancé(e) relationship with the beneficiary. The director cited concerns raised by the beneficiary's interview with a consular officer at the U.S. consulate in [redacted] Mexico subsequent to Citizenship and Immigration Services' (CIS) approval of the petition benefiting him. *Decision of the Director,* dated July 9, 2003.

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(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(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 Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on August 27, 2001. It was approved by the director on September 10, 2001, but returned to CIS following the beneficiary's interview at the U.S. consulate in [redacted] on December 26, 2001. The Department of State officer who conducted the interview determined that the beneficiary was not eligible to receive a fiancée visa because the relationship with the petitioner was not *bona fide*. This conclusion was based both on the lack of knowledge shown by the beneficiary and petitioner concerning each other's lives and information that the petitioner and beneficiary had previously married in June 2001.

The director issued a notice of intent to deny, requiring the petitioner to submit evidence within 30 days to explain the inconsistent responses provided to the State Department officer and to clarify the nature of her relationship to

the beneficiary. The petitioner responded to the director's request on June 6, 2003, submitting a "non-existence" certificate from the civil registrar's office in the city of Cerano, located in the Mexican state of Guanajuato, the supposed location of her marriage, indicating no record of a 2001 marriage existed.

On July 9, 2003, the director denied the Form I-129, noting the petitioner's submission of the certificate just noted but stating the petitioner had failed to submit documentary evidence to explain the inconsistent answers provided by the petitioner and beneficiary at the time of the beneficiary's consular interview.

On appeal, the petitioner provides a statement that addresses several issues on which she and the beneficiary provided inconsistent responses to the Department of State officers who interviewed them on December 26, 2001. She also submits a certificate from the civil registry for the Mexican state of Guanajuato as further proof that she and the beneficiary are not married. The certificate states that a search of the state's registry from 1969 to July 15, 2003 finds no record of the petitioner's marriage to any individual. She also provides a notarized statement from her mother asserting that the beneficiary's relationship to the petitioner is not based on his desire for immigration benefits and a photograph of her wedding dress.

Section 214(d) of the Act states that CIS *shall* approve the Form I-129F when a petitioner submits evidence to establish that he/she and the beneficiary have met within the two-year period preceding the filing of the Form I-129F, have a bonafide intention to marry and are legally able and willing to marry within 90 days of the beneficiary's arrival in the United States. While the Department of State's interviews of the petitioner and beneficiary raised the possibility that they were already married and, therefore, not legally able to marry within 90 days of the beneficiary's arrival in the United States, that issue appears resolved by the petitioner's submission of certificates from the civil registrars in the Mexican city and state where she was alleged to have been married. Neither municipal nor state records indicate any previous marriages for the petitioner.[1] Instead, the director appears to have based his denial on the beneficiary's failure to establish he had a close personal relationship with the beneficiary at the time of his consular interview. However, no such requirement exists for the approval of a Form I-129F and the AAO finds the director to have erred in imposing it. While section 214(d) of the Act stipulates that the petitioner must establish that she and the beneficiary have a bonafide intention to marry, this language is not synonymous with a requirement that the petitioner establish the closeness of their relationship. The AAO has found nothing in the record to indicate the petitioner and beneficiary do not intend to marry within 90 days of the beneficiary's arrival in the United States.

In reaching its decision, the AAO notes the concerns expressed by the consular officer and, subsequently, the director regarding the beneficiary's lack of knowledge concerning the petitioner. However, as just noted, section 214(d) of the Act does not require the beneficiary to be knowledgeable regarding the petitioner or her history, nor that CIS evaluate the closeness of the fiancé(e) relationship before approving the petitioner's Form I-129F.

[1] The AAO notes that had the petitioner and beneficiary been found to be married, the petitioner would still be able to file a Form I-129F on behalf of the beneficiary under section 101(a)(15)(k)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(k)(ii). The Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) has changed the language of section 101(a)(15)(k) of the Act to allow U.S. citizens to file Form I-129F fiancé(e) petitions for their spouses if they have already filed Form I-130 alien relative petitions on their behalf.

Instead, it allows for the approval of the Form I-129F when the petitioner and beneficiary have met no more than once during the two-year period preceding the date of filing, and may never have met previously. Accordingly, the reservations expressed by the consular officer and the director are not probative for the purposes of these proceedings.

The director's denial of the instant petition appears to be based solely on the petitioner's failure to submit sufficient evidence to establish the genuineness of her relationship to the beneficiary. As the director erred in imposing such a requirement on the petitioner, the AAO finds the petitioner to have overcome the basis for the director's denial of the instant petition. Accordingly, the AAO will sustain the petitioner's appeal and approve the petition.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.