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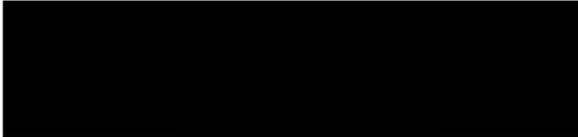
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
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MAR 05 2010

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

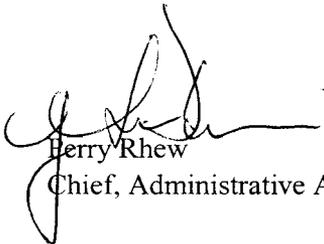
PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and determined there is no appeal to her decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director for further consideration.

The petitioner is a U.S. citizen who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiancé(e) of a United States citizen pursuant to § 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 because the I-130 petition filed by the petitioner on behalf of the beneficiary had been denied. On appeal, counsel states that the director incorrectly considered the beneficiary for classification as a K-3 spouse of a U.S. citizen rather than a K-1 fiancée of a U. S citizen. As supporting documentation, counsel resubmits copies of: the Declaration of Nullity of Marriage, dated March 6, 2008, of the beneficiary and her former spouse, [REDACTED]; and a Declaration of Presumption of Death, dated June 17, 2002, of [REDACTED].

It is noted that the record contains a memorandum dated May 7, 2007, from the “Immigrant Visa Branch – Consular Section” of the U.S. Embassy in Manila, Philippines, stating, in part: “[S]ince the [beneficiary’s] second marriage [to the petitioner] was contracted without the first being legally annulled, this second marriage is void ab-initio according to Article 40 of the Philippine Family Code. [The beneficiary] must legally terminate her first marriage, then she will be free to contract a legal marriage to the petitioner.”

In this matter, the instant I-129F petition was filed on May 12, 2008, after the beneficiary’s marriage to [REDACTED] had been declared null, and after the U.S. consular officer determined that the petitioner’s marriage to the petitioner was void ab-initio according to Article 40 of the Philippine Family Code. Thus, in accordance with counsel’s finding, the beneficiary should have been considered for classification as a K-1 nonimmigrant fiancée of a U. S citizen rather than a K-3 nonimmigrant spouse of a U.S. citizen. Accordingly, the AAO shall remand the matter to the director for further consideration and to provide the petitioner with an opportunity to submit all of the required documentation. The director may request any additional information or evidence that she deems necessary. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter remanded for further action consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.