



### **III. STANDARD FOR RECONSIDERATION**

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *8 CFR 103.5(a)(3)*

The applicant is entitled to present evidence to overcome a presumption or finding of ineligibility. It is the policy of the U.S. Government to give the applicant every reasonable opportunity to establish eligibility to receive a visa. This policy is the basis for the review of refusals at consular offices and by the Department. It is in keeping with the spirit of American justice and fairness. *9 FAM 403.10-4*

An applicant who has been refused under INA 221(g) need not complete a new NIV application form or pay the machine readable visa (MRV) fee again, if less than one year has elapsed since the latest refusal. *9 FAM 403.10-4(A)b*

### **IV. ARGUMENT**

#### **A. AS A MATTER OF LAW, THE CONSULAR OFFICER ERRED IN SAYING THE PETITIONER WAS INELIGIBLE.**

The consular officer incorrectly stated that the petitioner was not eligible because he had multiple violent arrests in the past. According to IMBRA violent crimes must be disclosed, which was done by the petitioner in the application and by the officer in the interview. IMBRA also specifies that anyone involved in a violent crime may not apply to a waiver to the limitation of

time/quantity of k1 applications a petitioner can make (see 8 U.S.C. §1184(d)(2)). This does not apply to the petitioner because it is his first petition and thus a waiver is not required. In addition, none of the arrests by the petitioner fall under the Adam's Walsh act as crimes against a minor and/or of sexual nature.

The term "specified offense against a minor" means an offense against a minor that involves any of the following:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.
- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of title 18, United States Code.
- (G) Possession, production, or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
- (I) Any conduct that by its nature is a sex offense against a minor.

*section 111(7) of the Adam Walsh Child Protection and Safety Act of 2006*

**B. AS A MATTER OF POLICY, THE CONSULAR OFFICER DID NOT ASK THE APPLICANT IF SHE STILL WISHES TO MARRY THE PETITIONER**

Inform the K-1 or K-3 visa applicant of any protection orders or criminal background information regarding the petitioner that U.S. Citizenship and Immigration Services has reported with an approved K petition. After informing the applicant, give the applicant time to decide whether he or she wishes to proceed with the K visa application, and, in

the case of an applicant for a K-1 visa, whether he or she still intends to marry the petitioner within 90 days of entering the United States. *9 FAM 502.7-3(C)(4)b.(1)*

**C. AS A MATTER OF SAFETY CONCERNS, THE PETITIONER WOULD LIKE TO ADDRESS THESE BY PRESENTING ADDITIONAL EVIDENCE**

The petitioner would like to submit the following documents in order to relieve any safety concerns the officer might have about the safety of the applicant coming to the USA to live with the petitioner. Below are the new documents the petitioner is collecting and would like to submit:

- A signed and notarized statement from the victim of the 2007 arrest attesting that strangulation did not occur and that the petitioner did not assault him until after he assaulted the petitioner.
- A signed and notarized statement from the victim of the 2005 domestic violence saying that the relationship was free from any forms of abuse for the entire length of the relationship after the 2005 arrest occurred (spanning 11 years).
- A signed statement from the petitioner describing in detail the events of each arrest, inaccuracies in the police reports, and what has been learned from the petitioner from the arrests and how he has matured.
- The petitioner may provide additional notarized character references.

**D. AS A MATTER OF LAW AND POLICY, THE OFFICER VIOLATED SECTIONS OF IMBRA**

The petitioner would like to notify the officer that in addition to IV.B. above, the officer violated two requirements under IMBRA.

The officer violated the pamphlet requirement by not giving said pamphlet to the petitioner on either of her interviews.



During an interview with an applicant for a K nonimmigrant visa, a consular officers shall—

(B) provide a copy of the pamphlet developed under subsection (a)(1) in English or another appropriate language and provide an oral summary, in the primary language of the visa applicant, of that pamphlet; *8 U.S. Code § 1375a(b)(1)*

The officer violated the confidentiality section of IMBRA by giving the applicant paperwork containing the names of the victims.

In fulfilling the requirements of this section, no official of the Department of State or the Department of Homeland Security shall disclose to a nonimmigrant visa applicant the name or contact information of any person who was granted a protection order or restraining order against the petitioner or who was a victim of a crime of violence perpetrated by the petitioner, but shall disclose the relationship of the person to the petitioner. *8 U.S. Code § 1375a(c)*

## **V. CONCLUSION**

The officer should reconsider the application to see if in fact there is legitimate evidence that the petitioner is legally ineligible to petition a K-1 visa. If the officer believes that based on what the officer saw in the application and/or interview does in fact render the petitioner ineligible the consulate should allow either the petitioner or applicant to produce additional evidence to address the concerns of ineligibility.

Dated 8/4/2021

Respectfully Submitted,



A handwritten signature in black ink, appearing to read 'Chris Brevig', is written above a horizontal line. A large, irregular redacted area obscures the middle portion of the signature.

Chris  Brevig

## Freedom of Information Act Request

RE: Case Number Number PHP2021564001

I, Christopher Charles Brevig, in compliance with the Freedom of Information Act, am requesting all available information relating to the K-1 visa application of my Fiance Lay Leap. Below are the details of the request:

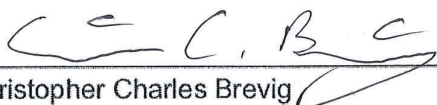
Petitioner Name: Christopher Charles Brevig  
Applicant Name: Lay Leap  
Petitioner DOB: 8/18/1980  
Applicant DOB: 8/4/1984  
Petitioner Place of Birth: Orlando, FL USA  
Applicant Place of Birth: Kampong Cham, Kampong Cham, Cambodia

Visa Type Requested: K-1  
Location of Embassy: Phnom Penh  
Case Number: PHP2021564001  
Last Action by Consulate: Visa refused under 221(g) and returned to USCIS  
Current Address: 42 Chambers Rd, Wildwood, GA 30757 USA  
Phone Numbers: 502-225-3237 (USA) 012715863 (Cambodia)  
Citizenship: USA (naturally born)  
Specific Documents Requested: Consular notes as well as all other documents which may be released under FOIA related to the reason for rejection.  
Additional Comments to Locate the Record: The first interview was on 7/22/2021 and the second interview was on 7/29/2021

Per the instructions quoted below from the government site url below I am making the request directly to the Embassy:  
Inquiries on visa cases in progress overseas should be made to the appropriate U.S. Embassy or Consulate handling your case.  
<https://foia.state.gov/Request/Visa.aspx>

STATEMENT: I do understand that there will be fees associated with this and that you will notify me if the fees will amount to more than \$25.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

  
Christopher Charles Brevig

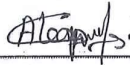
8/4/2021  
Date

## Authorization for the Release of Records

RE: Case Number Number PHP2021564001

I, Leap Lay, authorize the Department of State to release all records about me to Christopher Charles Brevig.

I declare, certify, verify or state that, under penalty of perjury under the laws of the United States of America, the foregoing is true and correct.



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Leap Lay

8.4.2021

Date